

1. UPDATED Agenda

Documents: [1-7-16 AGENDA \(REVISED 1-6-16\).PDF](#)

2. 50 Industrial Way

Documents: [MEMO_ZBA.PDF](#)

3. 6 Washington Avenue

Documents: [APPLICATION - 6 WASHINGTON AVE.PDF](#)

4. 14 Alba Street

Documents: [12-14 ALBA - COMPLETE ZBA APPLICATION 2015-12-08.PDF](#)

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Kent Avery, Chair
Donna Katsiaficas, Secretary
Chip Gavin
William Getz
Eric Larsson

APPEAL AGENDA

**** Note: This meeting will begin at 7:30 PM ****

The Board of Appeals will hold a Public Hearing on Thursday, January 7, 2016, 7:30 p.m., Room 209, 2nd Floor, City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

1. Old Business:

A. Disability Variance Appeal:

39 Skylark Road, Robert E. Shaw owner, Tax Map 347, Block E, Lot 003, R-3 Residential Zone: The applicant is seeking a disability variance under section 14-90(d)(1) to install a handicap ramp. The appellant is requesting a front setback of twenty-three feet instead of the required twenty-five foot front yard setback [section 14-90(d)(1)]. The appeal was tabled by the board on December 3, 2015 because the owner was not able to attend. Representing the appeal is the owner.

2. New Business:

A. Interpretation Appeal:

50 Industrial Way, Allagash Brewing Company, lessee, Tax Map 326, Block B, Lot 008, I-M Industrial Zone: The applicant is challenging the Zoning Administrator's determination in a letter dated November 3, 2015 that selling pre-packaged food is not an incidental accessory use to a brewery and therefore cannot be allowed under the zoning ordinance (section 14-247). Representing the appeal is Gordon R. Smith, Esq. and Jill Perry from Allagash Brewing.

B. Conditional Use Appeal:

14 Alba Street, Emily Hickey, owner, Tax Map 133, Block C, Lot 013, R-5 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-118(a)(5)(a) to add two dwelling units to her existing two-family home. Representing the appeal is Christopher Hickey, the spouse of the owner.

3. Adjournment



Planning & Urban Development Department

Jeff Levine, AICP, Director

Ann Machado, Zoning Administrator

TO: Zoning Board of Appeal Chair and Members
FROM: Ann Machado, Zoning Administrator
SUBJECT: 50 Industrial Way – 326-B-008, 009 & 010
DATE: December 30, 2015
RE: Interpretation Appeal

A handwritten signature in dark ink, appearing to be "JBL", is written over the "SUBJECT" and "DATE" lines of the memo.

50 Industrial Way is located in the I-M Industrial Zone. § 14-247(a) allows low impact industrial uses which includes breweries. Allagash Brewing Company built the original brewery (12,350 sf) in 2006 under permit #06-1434. In 2010 a 40' x 130' addition to the brewery was added on the right side under permits #10-1138 and #2011-01-247. In 2012 (#2012-09-4996) a 5,900 sf addition was added that included a "retail space" for accessory tasting and sales.

§ 14-247 (Permitted Uses) and § 14-248.1 (Conditional Uses) do not list retail as a use. § 14-247(s) does allow "Incidental accessory uses". Attorney Smith seems to argue that the "accessory tasting room and accessory retail sales of beer, clothing and other items associated with the brewery" approved under permit #2012-09-4996 were approved using this section. The "retail space" for "accessory tasting and sales" were approved under section § 14-249(b). § 14-249 lists the uses that are specifically prohibited in the zone. Sub-section (b) prohibits "retail trade that is not ancillary to a permitted use". The "accessory tasting room and sales" as listed on the certificate of occupancy (Exhibit A) for permit #201248397 (#2012-09-4996) issued on 7/9/13 was approved as "retail trade that is ancillary to a permitted use". Chapter 14 of the City Code does not specifically define the word ancillary. In *A Glossary of Zoning, Development and Planning Terms* published by the American Planning Association in 1999 and edited by Fay Dolnick and Michael Davidson, under the term ancillary use it says "See accessory use". § 14-47 defines accessory use as "Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses". Under this definition, the tasting room and sale of beer in the "retail space" would be ancillary to the permitted use as a brewery. Note that the certificate of occupancy allowed "accessory tasting & sales". It did not specifically list "retail sales of beer, clothing and other items". "Clothing and other items" that advertise the brewery are not directly produced in the space and therefore are not "subordinate to the location, function and operation of the permitted use" as a brewery.

When Allagash Brewing Company applied for a Food Service Establishment without Preparation License from the City Clerk's Office to sell pre-packaged snack food the Zoning office was notified because zoning has to approve the use. Zoning denied the license because just as the sale of clothing and other items are not a direct product of the brewery, neither is providing snacks in the tasting room. Attorney Smith argues that the proposed area for the packaged food is subordinate to the existing tasting room and retail sales. The proposed size of the area is not the point. The sale of pre-packaged snacks is not incidental to the function and operation of the permitted use as a brewery because it is not a direct product of it.



Planning & Urban Development Department

Jeff Levine, AICP, Director

Ann Machado, Zoning Administrator

Attorney Smith also argues that the "availability of food is directly related and beneficial to the existing tasting room accessory use". He goes on to say that Allagash would like to offer food "to temper the potential effects of alcohol during a day of sampling beer". A tasting room traditionally provided free, small samples of beer that was produced on site. In this context, food would not be necessary to "temper the potential effects of alcohol" because only a small amount would be sampled and the customer would not stay there all day drinking samples. Attorney Smith concludes that state law requires that bars "offer food at all times that liquor is for sale". A tasting room is not a bar and is not licensed as such.

Attorney Smith's third argument is that many of the "tasting rooms" in Portland make snacks available and therefore the Zoning office "determination is inconsistent with the reality of commonly accepted industry practices". This is not a valid argument. If other breweries in the I-M zone are selling pre-packaged snacks in their tasting room, they are not in compliance with the permitted uses or with the ancillary uses to a permitted use.

Attorney Smith's final argument is that the "pre-packaged snack service" is allowed under § 14-248, Performance based uses (Exhibit B). Under this section two criteria must be met. Sub-section (a) states: "The proposed development is consistent with the purposes of this zone". § 14-246 outlines the purpose of this zone (Exhibit C). It is to "provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist". The zone is "intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. ...Often uses may be high-way oriented and transportation related." The sale of pre-packaged food in the "retail space" of the brewery is neither a light or moderate industrial use nor a transportation related use. It does not meet the first standard of this section.

In conclusion, a tasting room and the retail sale of beer are ancillary uses to the permitted use as a brewery. The sale of pre-packaged food is not accessory to the brewing of beer.



Certificate of Occupancy

CITY OF PORTLAND, MAINE

Department of Planning and Urban Development
Building Inspections Division



Location: 50 Industrial Way

Issued To: 50 Industrial Way LLC

CBL: 326 B009001

Issued Date: 07/09/2013

This is to certify that the building, premises, or part thereof, at the above location, built-altered-changed as to use under Building Permit No. 201248397 has had a final inspection, has been found to conform substantially to the requirements of the Building Code and the Land Use Code of the City of Portland, and is hereby approved for occupancy or use, limited or otherwise, as indicated below.

PORTION OF BUILDING OR PREMISES
ENTIRE

APPROVED OCCUPANCY
USE GROUP F-2/B/M
TYPE 2B
BREWERY/WAREHOUSE/ACCESSORY
TASTING & SALES
MUBEC '09

LIMITING CONDITIONS: NONE

Approved:

Inspector

Inspection Division Director

Notice: This certificate identifies the legal use of the building or premises, and ought to be transferred from owner to owner upon the sale of the property.

Exhibit A.

Exhibit B

City of Portland
Code of Ordinances
Sec. 14-247

Land Use
Chapter 14
Rev. 9-15-2014

Sec. 14-248. Performance based uses.

Uses not expressly permitted as provided in section 14-247 or expressly prohibited in section 14-249 may be permitted if they meet the following conditions and standards:

- (a) The proposed development is consistent with the purposes of this zone.
- (b) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

(Ord. No. 164-97, § 7, 1-6-97)

Sec. 14-248.1. Conditional uses.

The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:

- (a) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
 - 1. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
 - 2. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
 - 3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and

- (i) *Radiation:* Radiation at a site shall comply with all applicable state and federal regulations.
 - (j) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or stream, or into the ground of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the public works authority.
 - (k) *Lighting:* All lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.
- (Ord. No. 164-97, § 6, 1-6-97)

Sec. 14-237. thru 14-245. Reserved.

DIVISION 14. I-M, I-Ma AND I-Mb INDUSTRIAL ZONES*

***Editor's note**—Ord. No. 164-97, § 7, passed Jan. 6, 1997, repealed div. 14, §§ 14-246-14-251 of this article and enacted new provisions as herein set out. Formerly, such provisions pertained to the I-2 and I-2b industrial zones and derived from §§ 602.12.A-602.12.F of the 1968 Code as amended by Ord. No. 499-74, § 5, adopted Aug. 19, 1974; Ord. No. 334-76, §§ 2, 3, adopted Jul. 7, 1976; Ord. No. 234-88, adopted Feb. 1, 1988; Ord. No. 330-90, § 2, adopted May 7, 1990; Ord. No. 15-92, § 18, adopted Jun. 15, 1992; Ord. No. 193A-93, § 2, adopted Feb. 17, 1993; and Ord. No. 154-96, § 15, 12-16-96.

Sec. 14-246. Purpose.

The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist.

The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.

The I-M, I-Ma and I-Mb industrial zones are intended to

provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure.

Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.
(Ord. No. 164-97, § 7, 1-6-97)

Sec. 14-247. Permitted uses.

The following uses are permitted whether provided by private or public entities in the I-M moderate impact industrial zone, the I-Ma and the I-Mb zone:

- (a) Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, musical instruments, precision instruments, watchmakers, toys and sporting goods, wood products, jewelry, assembly of electrical components, tool and die shops and the packaging of food.
- (b) Research and development and back office uses.
- (c) Building contractors and construction and engineering services.
- (d) Wholesale trade.
- (e) Warehousing and distribution facilities, including outdoor storage.
- (f) Intermodal transportation facilities and transportation terminals.
- (g) Repair services, including all types of automotive repair services.
- (h) Indoor amusement or recreational centers.
- (i) Plant and tree nurseries, including associated recycling activities.

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
(207) 799-4922 * fax 221-1688
david@lourielaw.com

December 2, 2015

Board of Appeals
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Greg's Properties Washave LLC Appeal - 6 Washington Avenue

To the Chair and Members, Greetings:

The 6 Washington Avenue property was owned for more than 50 years by the Berenson family, which operated B&B Cleaners in a building on the site. The property consisted of a dilapidated building with accessory parking. Alec Altman (Greg's Properties WashAve LLC) purchased the property in 2006 (deed attached) proposing construction a second small *Binges Wings* restaurant on the site in 2008. However, when City staff erroneously demanded payment of \$150,000 (the replacement housing fee for three apartments that had not existed since 1960), and the original *Bingas Wingas* restaurant burned, Alec Altman opened a larger *Bingas Wingas* restaurant on Free Street rather than continuing to fight with the City over building and re-building the two smaller restaurants. City staff continued to demand payment (refusing to grant a demolition permit without payment of the \$150,000.) Finally, the City amended the Ordinance under threat of a lawsuit, and Alec Altman demolished the derelict structure, leaving the property vacant. Alec fenced the vacant lot at the City's insistence, and maintained and repaired the fence for the last five years.

Recently, Alec Altman was approached by the owner of the Otto's pizza restaurant for permission to use the now vacant lot for parking accessory to his restaurant use at 223 Washington Avenue. The Otto's restaurant is a conforming use in the zoning district in which both properties are located. For

Board of Appeals

Re: Greg's Properties Washave LLC Appeal - 6 Washington Avenue

December 2, 2015

Page 2

the last few months the Washington Avenue property has been used for parking by Otto's delivery drivers under the attached lease. The owner of Otto's proposes to continue that use, as well as for accessory customer parking. A complaint from a neighbor that the lot was being used for parking as a principal use was received by the Inspections Division. The complaint resulted in the November 3, 2015 Order to cease such use.

The two properties abut each other in the rear, as is shown on the City's Tax map (6 Washington Avenue is highlighted in yellow.) The Otto's pizza restaurant is highlighted in red. The parking will be under the common control of the owner of Otto's pizza restaurant, which offers dine-in, call-in, and take-out pizza service.

The Applicant submits that the use of 6 Washington Ave for parking (by patrons and drivers for a permitted restaurant) is customary and incidental to the pizza restaurant use, and that the limited and dedicated parking therefore qualifies as an accessory use under Portland City Code §§14-182 and 14-404 (b).

§14-182 (b) lists both *Restaurants* and *Drinking Establishments* as permitted uses in the B-2b District. §14-182 (d) ¶four expressly permits **"Accessory uses, as provided in section 14-404."** §14-404 (b) allows **"Off-street parking when serving conforming uses located in any zone."**

Neither §404 (b), which authorizes parking as an *accessory use*, nor the definition of "accessory use" (in §14-47¹) expressly requires that an accessory parking use be located on the same lot or parcel as the principal use. Indeed, where the requirement that an accessory use be on the same lot as the

¹ §14-47 "*Accessory uses*: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses."

Board of Appeals

Re: Greg's Properties Washave LLC Appeal - 6 Washington Avenue

December 2, 2015

Page 3

principal use (found in sub-§404.a²), it applies only to accessory uses *other than parking*. Since sub-¶(b) governing accessory parking is an alternative of sub-¶(a) the same lot or parcel requirement clearly does not apply. Moreover, under the rules of statutory construction, in any perceived conflict between the two provisions, the more specific provision applicable to parking as an accessory use (sub-§(b)) is controls over the more general provision (sub-§(a).)

CONCLUSION

Appellant Greg's Properties Washave LLC's use of 6 Washington Avenue for *accessory* restaurant parking for Otto's drivers and customers is a permitted use in the B-2(b) zoning district, and the Order dated November 3, 2015 must be reversed or modified to the extent that it precludes otherwise lawful accessory parking on the Washington Avenue lot.

Sincerely,



David A. Lourie, Agent for Appellant

Submitted with

Original +10 Additional copies

Disk with electronic copy

Check for \$150 Application and Processing Fee

cc: Client
Otto's

² §14-404 “(a) A subordinate use of land or building which is customarily incidental to the main building or to the principal use of the land and which is located on the same lot with the principal building or use.”

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND ZONING BOARD OF APPEALS

Interpretation Appeal Application

Applicant Information:

NAME

Greg's Properties Washave LLC

BUSINESS NAME

Greg's Properties Washave LLC

BUSINESS ADDRESS

c/o David A. Lourie, 189 Spurwink Ave CE 04107

BUSINESS TELEPHONE & E-MAIL

799-4922 david@lourielaw.com

APPLICANT'S RIGHT/TITLE/INTEREST

Owner - attached deed

CURRENT ZONING DESIGNATION

B-2b

EXISTING USE OF THE PROPERTY:

~~Accessory parking for Otto's Pizza Restaurant located on abutting property.~~

Subject Property Information:

PROPERTY ADDRESS

6 Washington Avenue

CHART/BLOCK/LOT (CBL)

13-G-7, 12

PROPERTY OWNER (If Different)

Greg's Properties Washave LLC

ADDRESS (If Different)

26 Village Brook Road, Yarmouth, ME 04096

PHONE # AND E-MAIL

914-261-4440

DISPUTED PROVISIONS FROM SEC 14- 14-182 & 404

ORDER, DECISION, DETERMINATION OR INTERPRETATION UNDER DISPUTE:

Letter of Zoning Administrator dated November 3, 2015.

TYPE OF RELIEF REQUESTED

~~Determination that parking by Otto's customers and delivery drivers is a permitted accessory use.~~

~~Site Plan approval for change of use will be obtained if use is determined to be permitted.~~

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

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

David Lourie, Agent for Greg's Properties Washave LLC 12/3/15
SIGNATURE OF APPLICANT DATE

389 Congress Street * Portland Maine 04101-3509 * Phone: (207) 874-8703 * Fax: (207) 874-8716
<http://www.portlandmaine.gov/planning/buildinsp.asp> * E-Mail: buildinginspections@portlandmaine.gov

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

November 3, 2015

Greg's Properties Washave LLC
26 Village Brook Road
Yarmouth, ME 04096
Attn: Alec Altman

RE: 6 Washington Avenue – 13-G-7 – B-2b Zone

Dear Mr. Altman,

A complaint has been received that the fence around your property at 6 Washington Avenue has been removed and the lot is now being used for parking. Parking as a principal use is not a listed, allowable use within the B-2b Zone in which this property is located. The current parking use is in violation of Section 14-182 of the Land Use Zoning Ordinance.

A similar incident occurred in 2010 and Marge Schmuckal, the Zoning Administrator at the time, sent a letter dated February 16, 2010 to you, see Attachment 1.

The lot must be vacated immediately and the fence line reestablished to maintain security. If you wish to change the use of the property at 6 Washington Avenue, you must first apply for a permit with Portland Inspection Division. If you have failed to vacate the lot and secure the property from vehicle access within 10 days of the receipt of this letter, the Department of Planning and Urban Development will commence legal action.

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

If you have any questions regarding this matter, please do not hesitate to contact me at 874-8720.

Sincerely,

Ann B. Machado
Zoning Administrator

Planning and Urban Development Department

Attachment

1. Letter to Greg's Properties Washave LLC from Marge Schmuckal, Zoning Administrator, Feb. 16, 2010.

Cc: Jeff Levine, Planning & Urban Development Director
Jennifer Thompson, Associate Corporation Counsel
Tammy Munson, Inspection Division Director
Stuart O'Brien, Planning Division Director
Barbara Barhydt, Development Review Services Manager



PORTLAND MAINE

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

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

February 16, 2010

Greg's Properties Washave LLC
26 Village Brook Road
Yarmouth, ME 04096
Attn: Alec Altman

RE: 6 Washington Avenue - 13-G-7 - B-2b Zone

Dear Alec,

It has been noticed that the fence around your property at 6 Washington Avenue has been breached. The open lot is now being used for parking. There are three Seacoast Security trucks parked presently on the lot with other cars and trucks. Parking as a principal use is not a listed, allowable use within the B-2b Zone in which this property is located. The current parking use is in violation of Section 14-182 of the Land Use Zoning Ordinance.

The lot must be vacated immediately and the fence line reestablished to maintain security. If you wish to change the use of the property at 6 Washington Avenue, you must first apply appropriately for a permit.

If you have failed to vacate the lot and secure the property from vehicle access within 10 days of the receipt of this letter, this office will commence legal action.

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

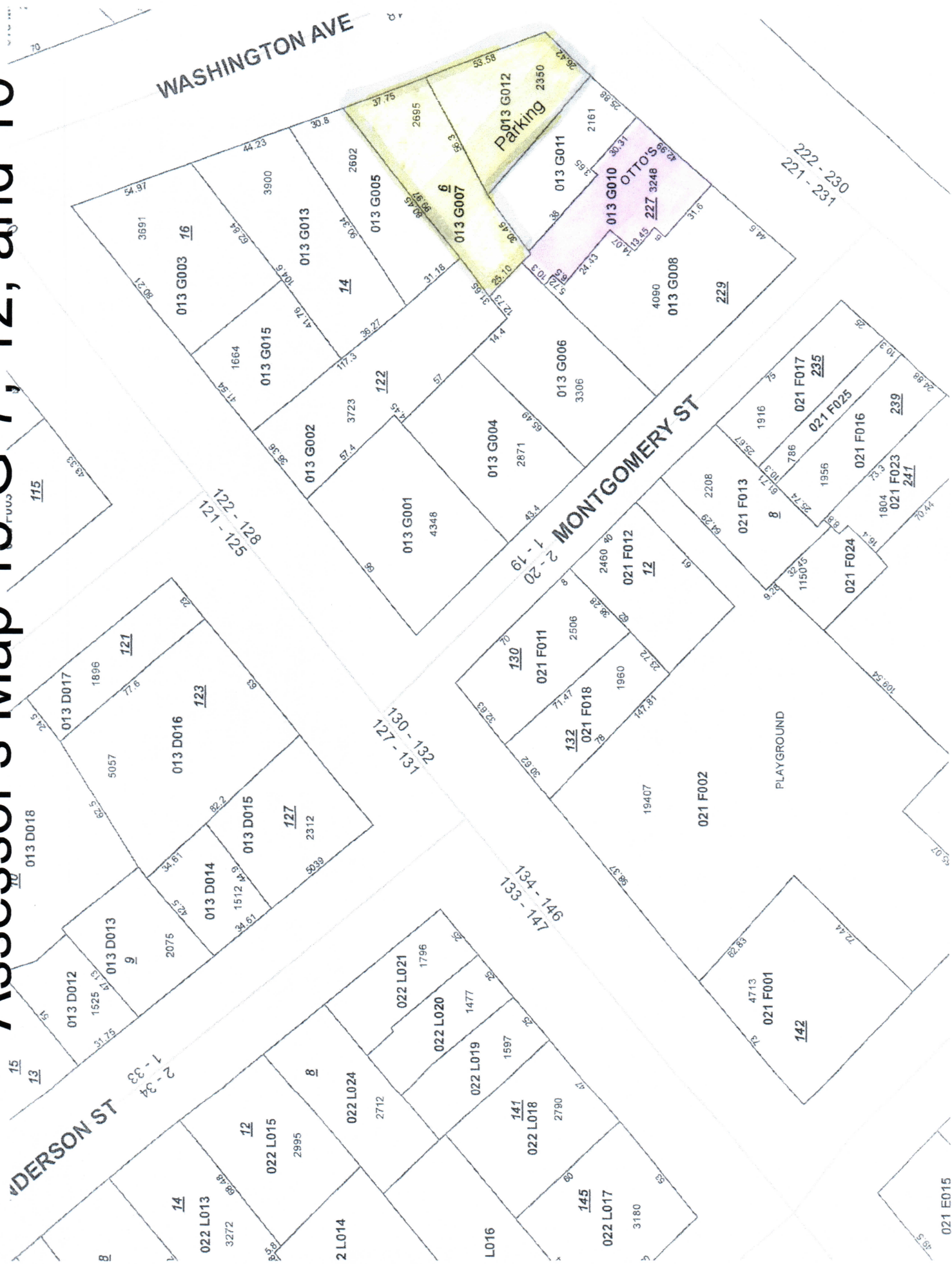
If you have any questions regarding this matter, please do not hesitate to contact me at 874-8695.

Very truly yours,

Marge Schmuckal
Zoning Administrator

Cc: Penny Littell, Planning and Urban Development Director
Ann Freeman, Corporation Counsel

Assessor's Map 13-G-7, 12, and 10



6 Washington Avenue 12-2-2015 3 pm



Deed to 6 Washington Avenue Page 1

Doc#: 16419 Bk:23771 Ps: 200

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **UMBEL PROPERTIES, LLC**, a Maine limited liability company with a place of business at Portland, Maine, for consideration paid, grant to **GREG'S PROPERTIES WASHAVE LLC**, a Maine limited liability company with a mailing address of 26 Village Brook Road, Yarmouth, ME 04096, with WARRANTY COVENANTS, the land in Portland, County of Cumberland and State of Maine, described below:

A certain lot or parcels of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine, more particularly described as follows:

Beginning at a point on the westerly side of Washington Avenue, which is ninety-one and thirty-three hundredths (91.33) feet from the intersection of the northerly sideline of Congress Street, and the westerly sideline of Washington Avenue; thence southwesterly at an internal angle of 73° 26' ninety-nine and ninety-seven hundredths (99.97) feet to a post; thence southeasterly by an internal angle of 81° 51' twenty-five and ten hundredths (25.10) feet to a post; thence easterly thirty and forty-five hundredths (30.45) feet to an iron pin; thence easterly fifty-six and three hundredths (56.03) feet to an iron pin on the westerly sideline of Washington Avenue; said line making an internal angle with Washington Avenue of 95° 44'; thence northerly along the westerly sideline of said Washington Avenue thirty-seven and seventy-five hundredths (37.75) feet to the point of beginning.

Also, a certain lot or parcel of land situated on Congress Street, in said City of Portland, bounded and described as follows:

Commencing at the northwesterly corner of Congress Street and Washington Avenue in the City of Portland; thence by said Congress Street southwesterly twenty-six (26) feet five (5) inches to land formerly owned by Samuel H. Quincy; thence by said Quincy's land northwesterly sixty-seven (67) feet nine (9) inches; thence northeasterly fifty-two (52) feet three (3) inches to Washington Avenue; thence southerly by said Washington Avenue fifty-three (53) feet seven (7) inches to the first mentioned bounds.

Also, a certain lot or parcel of land, with the buildings thereon, situated on the southwesterly side of Washington Avenue, in said Portland, bounded and described as follows:

Beginning at the most Easterly corner of the lot of land

MAINE REAL ESTATE TAX PAID

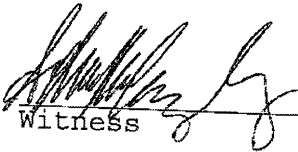
Deed to 6 Washington Avenue Page 2

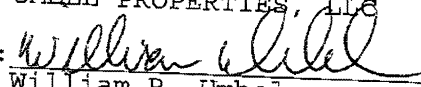
Doc#: 16419 BK:23771 Pg: 201

which was conveyed to John C. Preston by Deeds from Sidney S. Nason and others and Charles A. York and others, dated November 16, 1881 and recorded in Cumberland County Registry of Deeds, in Book 482, Page 313 and 314; thence running Southwesterly by said Preston's land Ninety and thirty-four one-hundredths (90.34) feet to land of Edward Moore; thence Southeasterly at an included angle of Eighty-five degrees and twenty-two minutes (85° 22') by said Moore's land Thirty-one and eighteen one-hundredths (31.18) feet to land formerly of Ann Woodman; thence Northeasterly at an included angle of Ninety-three degrees and fifty-one minutes (93° 51') and by said Woodman's land Eighty and forty-five one-hundredths (80.45) feet to Washington Avenue; thence Northwesterly at an included angle of one hundred four degrees and forty-six minutes (104° 46') Thirty and eight tenths (30.8) feet to the place of beginning.

Being the same premises conveyed to the Grantor herein by warranty deed dated June 8, 2001 from East End Corp. and recorded in the Cumberland County Registry of Deeds in Book 16402, Page 196.

IN WITNESS WHEREOF, the said Umbel Properties, LLC has set its hand this 20 day of March, 2006.

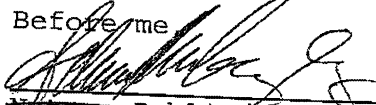

Witness

UMBEL PROPERTIES, LLC
BY: 
William R. Umbel
Its Manager

STATE OF MAINE
COUNTY OF CUMBERLAND

March 20, 2006

Then personally appeared Umbel Properties, LLC by its Manager, William R. Umbel and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said company.

Before me

Notary Public/Attorney at Law

Received
Recorded Register of Deeds
Mar 20:2006 12:59:38P
Cumberland County
John B O'Brien

225 PARKING

Parking Lease to Otto's Page 1

PARKING LOT LEASE

THIS PARKING LOT LEASE (the "Agreement" or "Lease") is entered into as of 10/1/2015, 2015, between **GREG'S PROPERTIES WASHAVE LLC**, a Maine limited liability company, with a mailing address of 26 Village Brook Road, Yarmouth, Maine 04096 ("Landlord"), and **OSCAR PIZZA, LLC**, a Maine limited liability company with an address of 576 Congress Street, Portland, Maine ("Tenant").

RECITALS

WHEREAS Landlord is the fee owner of property situated in the City of Portland, County of Cumberland and State of Maine at 6 Washington Avenue, Portland ME 04104, and 221 Congress Street, Portland, Maine 04104, more particularly described in a deed dated March 20, 2006 recorded in the Cumberland County Registry of Deeds in Book 23771, Page 200, and also identified by the City of Portland as Tax Assessors Map 13, Block G, Lot 12 and Lot 7 (the "Leased Premises").

WHEREAS Tenant wishes to lease the Leased Premises, and Landlord wishes to let the Leased Premises to Tenant, for the purpose of providing accessory parking in connection with building(s) on adjacent premises under Tenant's ownership or control and in accordance with the terms and conditions of this Agreement.

AGREEMENT

1. Term. The term of this Agreement will begin on 10/1/15, (the "Commencement Date") and shall continue on a month to month basis. Either party/shall have the option of terminating this Lease by providing the other party sixty (60) days advance written notice of its request to terminate.

2. Rent. Tenant agrees to pay Landlord the amount of 1200 - Dollars (\$14400) per month (the "Rent"). The first such payment shall be due and payable on the Commencement Date, and thereafter Rent shall be paid on the first day of each month during the Term. Rent shall be prorated for any partial months.

3. Intentionally Deleted.

4. No Set Off. Tenant waives and disclaims any present or future right to withhold any rent payment or other payment due under this Agreement, or to set off in any action for rent, as a result of any obligation of Landlord, Tenant agrees that it will not claim or assert any right to so withhold or set off rent.

5. Interest/Service Charge. Tenant shall pay Landlord a service charge of Five Percent (5%) of the amount due for all monthly rent payments not paid by the fifth (5th) day of the month for which they are payable. The service charge is imposed upon Tenant in an effort to reimburse Landlord for the inconvenience of handling, receiving and collecting delinquent payments.

N

6. Permitted Uses. The Leased Premises shall be under the exclusive control of Tenant but shall be used only for, and for the purpose of providing accessory parking in connection with building(s) on adjacent premises under Tenant's ownership or control and for no other use or purpose without the Landlord's prior written consent, which shall be granted or withheld in Landlord's sole and subjective discretion. The Tenant shall comply with all laws, ordinances, codes and regulations regarding the Leased Premises and the permitted uses upon the Leased Premises.
7. Operating Expenses. Tenant agrees to pay all expenses associated with holding and operating the Leased Premises, including all utilities, if any, trash and snow removal, general maintenance, insurance, property taxes, special assessments, water and sewer assessments, if any, and other charges imposed by law or against the Leased Premises as part of Tenant's obligation hereunder.
8. Permits. Tenant will apply for, pay for and keep current all permits and licenses required for the lawful operation of the Leased Premises.
9. Intentionally Deleted.
10. Insurance. Tenant shall procure and maintain throughout the Term an insurance policy, at its sole cost and expense, insuring Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Leased Premises or the condition of the Leased Premises (the "Policy"). The amount of insurance shall be what Landlord may reasonably require and approve, but shall be in amounts not less than Two Million Dollars (\$2,000,000.00) combined single limit with deductibles of not less than Five Thousand Dollars (\$5,000) per occurrence under standard Maine form policies. Tenant shall deposit with Landlord certificates for such insurance at or prior to the commencement of the term, and thereafter within thirty (30) days prior to the expiration of any such policies. Such certificates of insurance shall name Landlord as an additional insured. All such insurance certificates shall provide that such policies shall not be canceled without at least thirty (30) days prior written notice to each assured named therein. If these provisions are not met, the Landlord shall be entitled, but shall not be required, to obtain such insurance at the cost of Tenant, which shall be paid by Tenant within ten (10) days after the Landlord gives Tenant notice. Any premium remaining unreimbursed to Landlord after said ten day period shall bear interest at eighteen percent (18%) per annum. Failure to maintain insurance shall be an Event of Default (as hereinafter defined).
11. Intentionally Deleted.
12. Security Deposit. Tenant shall deposit with Landlord and shall maintain at all times the sum of _____ Dollars, (\$ 0), as security for the faithful performance by Tenant of every term and condition of this Lease. Tenant shall not be entitled to apply the security in payment of rent. If there should be a default by Tenant in respect to any term or condition of this Lease, Landlord may use all or any part of the security deposit to perform the same for the account of the Tenant, or for any damages or deficiency. Any interest accruing thereon shall be for the sole benefit of Landlord. If Tenant shall fully and faithfully comply with all of the provisions of this Lease, then the security deposit or any balance thereof remaining shall be repaid to Tenant within sixty (60) days from the termination of this Lease. In the event of any

Parking Lease to Otto's Page 3

sale, transfer or assignment of Landlord's interest under this Lease, Landlord shall transfer the security to the vendee, transferee, or assignee, as the case may be, and Landlord thereupon shall be released from all liability for repayment of the security, and Tenant in each instance shall look solely to such vendee, transferee or assignee for repayment of the security deposit.

13. Tenant's Obligations. The Tenant, at its own expense, shall properly maintain and keep the Leased Premises and all improvements in good order, condition and repair. The Tenant in maintaining, repairing or improving the Leased Premises shall not allow any mechanic's liens to arise which are not bonded over within sixty (60) days of filing. The Tenant shall not permit waste, damage, or injury to the Leased Premises or the improvements.

14. Subordination and Quiet Enjoyment. This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter a lien or liens on the Leased Premises of which the Leased Premises are a part and the Tenant shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage. Provided Tenant performs all of its obligations under this Lease, Tenant shall be entitled to the quiet enjoyment of the Leased Premises.

15. Landlord's Access. Landlord or agents of Landlord may, at all reasonable times during the term of this Lease, enter the Leased Premises (i) to examine the Leased Premises and, if Landlord shall so elect, to make any repairs or additions Landlord may deem necessary and, at Tenant's expense, to remove any alterations, additions, or the like, not consented to in writing; and (ii) to show the Leased Premises to prospective purchasers, grantees and mortgagees.

16. Indemnification and Liability. Tenant will defend and, except to the extent caused solely by the gross negligence or willful conduct of Landlord, will indemnify Landlord and its employees, agents and management company, and save them harmless from any and all injury, loss, claim, damage, liability and expense (including reasonable attorneys' fees and costs of collection) in connection with the loss of life, personal injury or damage to property or business, arising from, related to, or in connection with the occupancy or use by Tenant of the Leased Premises, or occasioned wholly or in part by any act or omission of Tenant, its contractors, subcontractors, licensees or concessionaires, or its or their respective agents, servants or employees while on or about the Leased Premises. Tenant shall also pay Landlord's expenses, including reasonable attorneys' fees and costs of collection, incurred by Landlord in successfully enforcing any obligation, covenant or agreement of this Lease or resulting from Tenant's breach of any provisions of this Lease. The provisions of this paragraph shall survive the termination or earlier expiration of the term of this Lease.

17. Eminent Domain. Should a substantial portion of the Leased Premises, be taken by eminent domain, the Landlord may elect to terminate this Lease. When such taking renders the Leased Premises unfit for use and occupation and Landlord does not so elect to terminate this Lease, a just and proportionate abatement of rent shall be made until the Leased Premises, or in the case of a partial taking what may remain thereof, shall have been put in proper condition for use and occupation. Landlord reserves and excepts all rights to damages to the Leased Premises and the



leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Tenant grants to Landlord all Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. Landlord shall give Tenant notice of its decision to terminate this Lease or restore said Premises within ninety (90) days after any occurrence giving rise to Landlord's right to so terminate or restore. Notwithstanding anything to the contrary, Landlord shall have no obligation to put the Leased Premises in proper condition for use and occupation. In addition, and notwithstanding anything herein to the contrary, if it shall appear that the Leased Premises have been rendered wholly untenable by reason of any such occurrence for a period in excess of 90 days, Tenant may at its election terminate this Lease and the tenancy granted herein by giving to the Landlord, within thirty (30) days following the date of such occurrence, written notice of its election to do so.

18. Default and Bankruptcy.

In the event that:

- A. The Tenant shall default in the payment of any installment of rent or other sum herein specified when due; or
- B. The Tenant shall default in the observance or performance of any of the Tenant's covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days after written notice thereof; or
- C. The leasehold hereby created shall be taken on execution, or by other process of law; or
- D. An assignment shall be made of Tenant's property for the benefit of creditors, or a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of Tenant's property, which assignment is not dismissed within sixty (60) days after commencement, or petition is filed by Tenant under any bankruptcy, insolvency or other debtor relief law;

Landlord shall be entitled to all remedies available to Landlord at law and equity, including without limitation, the remedy of forcible entry and detainer, and Landlord lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to and repossess the same as of its former estate, and expel Tenant and those claiming through or under it and remove it or their effects without being deemed guilty of any manner or trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such mailing or entry as aforesaid, this lease shall terminate; and Tenant covenants and agrees, notwithstanding any entry or reentry by Landlord, whether by summary proceedings, termination, or otherwise, that Tenant shall, as of the date of such termination, immediately be liable for and pay to Landlord the entire unpaid rental and all other balances due under this Lease for the remainder of the term. In addition, Tenant

agrees to pay to Landlord, as damages for any above described breach, all costs of reletting the Leased Premises including real estate commissions and costs of renovating the Premises to suit any new Tenant.

19. **NOTICE**

Any notice from the Landlord to the Tenant relating to the Leased Premises or to the occupancy thereto, shall be deemed duly served, if mailed to the Tenant at the address set forth in Article 1 of this Lease, or at such other address as Tenant may from time to time advise in writing, registered or certified mail, return receipt requested, postage prepaid, addressed to Tenant. Any notice from Tenant to Landlord relating to the Leased Premises or to the occupancy thereof, shall be deemed duly served, if mailed to the Landlord by registered or certified mail, return receipt requested, postage prepaid, addressed to Landlord at Landlord's address set forth in Article 1, or at such other address as Landlord may from time to time advise in writing.

20. **SURRENDER**

Tenant shall at the expiration or other termination of this Lease peaceably yield up the Leased Premises and leaving the Leased Premises clean and in as good order, repair and condition as the same are in at the commencement of the term of the Lease.

21. **HAZARDOUS MATERIALS**

Tenant covenants and agrees that, with respect to any hazardous, toxic or special wastes, materials or substances including asbestos, waste oil and petroleum products (the "Hazardous Materials") which Tenant, its agent employees, may use, handle, store or generate in the conduct of its business at the Leased Premises Tenant will: (i) comply with all applicable laws, ordinances and regulations which relate to the treatment, storage, transportation and handling of Hazardous Materials; (ii) that Tenant will in no event permit or cause any disposal of Hazardous Materials in, on or about the Leased Premises; (iii) that Tenant will with advance notice and at all reasonable times permit Landlord or its agents or employees to enter the Leased Premises to inspect the same for compliance with the terms of this paragraph and will further provide upon five (5) days notice from Landlord copies of all records which Tenant may be obligated by federal, state or local law to obtain and keep; (iv) that upon termination of this Lease, Tenant will, at its expense, remove all Hazardous Materials from the Leased Premises which came to exist on, in or under the Leased Premises during the terms of this Lease or any extensions thereof and comply with applicable state, local and federal laws as the same may be amended from time to time; and (v) Tenant further agrees to deliver the Leased Premises to Landlord at the termination of this Lease free of all Hazardous Materials which came to exist on, in or under the Leased Premises during the term of this Lease or any extension thereof. The terms used in this paragraph shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

22. **LIMITATION OF LIABILITY**



Tenant agrees to look solely to Landlord's interest in the Leased Premises for recovery of any judgment from Landlord it being agreed that Landlord is not personally liable for any such judgment.

23. **Landlord DEFAULT**

Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Tenant to the Landlord properly specifying wherein the Landlord has failed to perform any such obligation. Further, if the holder of the mortgage on the Leased Premises notifies Tenant that such holder has taken over Landlord's rights under this Lease, Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against Landlord from rent thereafter due and accruing, but shall look solely to the Landlord for satisfaction of such claim.

24. **WAIVER OF RIGHTS**

No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other, shall be construed as a consent or waiver to or of any other breach of the same or other covenant, condition or duty.

25. **SUCCESSORS AND ASSIGNS**

The covenants and agreements of Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successor and assigns, but no covenant or agreement of Landlord, express or implied shall be binding upon any person except for defaults occurring during such person's period of ownership not binding individually upon any fiduciary, any shareholder or any beneficiary under any trust.

26. **HOLDOVER**

If Tenant fails to vacate Leased Premises at the termination of this Lease, then the terms of this Lease shall be applicable during said holdover period, except for base rent, which shall be increased to two (2) times the then current base rent for the period just preceding such termination; but this provision shall not be interpreted as consent or permission by the Landlord for Tenant to holdover at the termination of this Lease and the terms of this holdover provision shall not preclude Landlord from recovering any other damages which it incurs as a result of Tenant's failure to vacate the Leased Premises at the termination of this Lease.

27. **MISCELLANEOUS**

*month to month lease - As Agreed in
amend - just request 60 Day Notice
To Terminate - Anthony AL*

Parking Lease to Otto's Page 7

- a. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this Lease, nor in any way affect this Lease.
 - b. This Lease shall not be recorded, but each party agrees, at the request of the other, to enter into a mutually satisfactory Memorandum of Lease in recordable form.
 - c. If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
 - d. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter contained herein and there are no understandings or agreements between Landlord and Tenant with respect to said subject matter which are not contained herein. This Lease cannot be amended except by written instrument executed by Landlord and Tenant.
 - e. For the purposes of this Lease, the words "Landlord" and "Tenant" shall be deemed and taken to mean each and every person or party mentioned as Landlord or Tenant herein, be the same one or more; and if there shall be more than one Landlord or Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
28. **BROKERAGE**

There are no brokers involved in this transaction. Tenant warrants and represents to Landlord that it has not dealt with any broker, finder or similar person concerning the leasing of the Premises. In the event of any brokerage claims against Landlord by anyone claiming to be Tenant's Broker, Tenant agrees to defend the same and indemnify Landlord against such claim. Landlord warrants and represents to Tenant that it has not dealt with any broker, finder or similar person concerning the leasing of the Premises. In the event of any brokerage claims against Tenant by anyone claiming to be Landlord's Broker, Landlord agrees to defend the same and indemnify Tenant against such claim.

18th day of September, 2015. IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this



Parking Lease to Otto's Page 8

DISCLAIMER: THIS IS A LEGAL DOCUMENT. IF NOT FULLY UNDERSTOOD,
CONSULT AN ATTORNEY.

Tenant:

Landlord:

OSCAR PIZZA, LLC

**GREG'S PROPERTIES WASHAVE
LLC**

BY:

Its:

Signature: Nancy Newell

BY

Its

Its: _____

December 7, 2015

12-14 Alba Street

**Sec. 14-118 (a) 5
Accessory Dwelling Unit
Conditional Use Application**

Prepared By:

Christopher Hickey
5 Greenway Drive
Falmouth, ME 04105
(207) 215-1108
chickey@trcsolutions.com

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- 1-2 Reason for Application & Supporting Facts

- 2-1 Paul Bulger Esq. – Request for CEO Interpretation
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Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND ZONING BOARD OF APPEALS

Conditional Use Appeal Application

Applicant Information:

Christopher Hickey
NAME

BUSINESS NAME

5 Greenway Drive, Falmouth, ME
BUSINESS ADDRESS 04105

(207) 215-1108
BUSINESS TELEPHONE & E-MAIL

See 7-1 and 9-1 in application
APPLICANT'S RIGHT/TITLE/INTEREST

R-5
CURRENT ZONING DESIGNATION

EXISTING USE OF THE PROPERTY:

Two-Family

TYPE OF CONDITIONAL USE PROPOSED:

Accessory Dwelling Units

Subject Property Information:

12-14 Alba Street
PROPERTY ADDRESS

133-C-13
CHART/BLOCK/LOT (CBL)

Emily Hickey
PROPERTY OWNER (If Different)

5 Greenway Drive, Falmouth, ME
ADDRESS (If Different) 04105

(207) 641-7295
PHONE # AND E-MAIL

CONDITIONAL USE AUTHORIZED BY
SECTION 14- 118(a)5

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.

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

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Cat H
SIGNATURE OF APPLICANT

11.19.15
DATE

To: Portland Zoning Board of Appeals
From: Christopher Hickey
Date: 11/19/2015
Re: 14 Alba Street Conditional Use Application – Reason for Application and Supporting Facts

Dear Zoning Board of Appeals,

Emily and I are happy to submit the attached conditional use application for dwelling units accessory to the existing two family at 12-14 Alba Street. We called this property home from 2006-2009 and have maintained our ownership since then, proudly offering the space to a small handful of stable tenants through the years.

The property has the unique condition of having two thousand square feet of vacant space in an attached building. This building previously held two additional units until a small fire forced it to be vacated. Because of the provisions of Division 30 of the ordinance, it could not be restored and has existed as a shell of a structure since then. I have had dozens of conversations with City staff through the years about restoring this use and the response was always the same: “Yes, what you want to do makes a lot of sense,” immediately followed by, “No, there is no mechanism within the ordinance that would allow you to do it.”

As you know, Portland’s City Council has been grappling with the issue of how to maintain Portland’s share of growth in Cumberland County, in the context of a city with rapidly increasing cost of living and a competitive housing market. I personally attended the Housing Committee’s meeting at the end of February earlier this year. I also met with Jeff Levine to discuss this particular property. I suggested at the meeting that there were opportunities for infill development in the city that were going unnoticed. Opportunities that did not fit neatly within an existing allowable or conditional use. Furthermore, I suggested that the owners or developers of such projects would be significantly more amenable to additional restrictions on the nature of the development than would be the case with a typical use that is permitted by right. Fast forward to October and the City Council passed amendments to the land use code that accomplish this very thing. Although the inclusionary zoning language has received most of the attention, it also included amendments to the accessory dwelling conditional use in the R-5 zone – the conditional use under which this application is being submitted.

We believe the application satisfies both the letter and spirit of the new ordinance. Not only does it meet the conditions, it also promises to offer a high-quality, affordable home in a city that, in spite of having so much to offer, is rapidly becoming out-of-reach for many. Each of the conditions is detailed below, along with how the application satisfies the condition. We have also included substantial and carefully considered supporting documentation to provide a clear picture of the intended use and how we are seeking to absolutely minimize impacts to surrounding properties.

Sec. 14-118 (a) 5a

This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;

The existing use is a legal two-family. The proposal is to add two units for a total of four.

Sec 14-118 (a) 5b

Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;

Ownership of the building will remain as-is. There is no intention of creating condominium units now or at any point in the future.

Sec. 14-118 (a) 5c

Any units created under this section must be “low-income housing unit[s] for rent” as per Division 30 and are subject to income verification as further outlined in implementing regulations;

The applicant understands this restriction and will comply with all current requirements. Furthermore, the applicant utilizes professional property management for the advertising, screening and placement of tenants and is confident they will utilize the correct criteria for verification.

Sec. 14-118 (a) 5d

The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable;

Each unit is proposed to include approximately one thousand (1,000) square feet of finished space.

Sec. 14-118 (a) 5e

Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;

As shown in the attached existing and proposed floor plans, the building structure will not change whatsoever. Some removal and adjustment of existing windows is proposed to fit with the proposed layout and to increase privacy relative to abutting uses. A small exterior stoop is also proposed to make the secondary entrance compliant with building codes.

Sec. 14-118 (a) 5f

Parking shall be provided as required by Division 20 of this article;

The existing parking area complies with Division 20, providing one off-street parking space for each existing and proposed dwelling unit.

Sec. 14-118 (a) 5g

There shall be no open, outside stairways or fire escapes above the ground floor;

None are proposed or required.

Sec. 14-118 (a) 5h

The project shall be subject to Article V for site plan review and approval and the following additional standards:

- i. *Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building;*

No building or roof modifications are proposed. Any alterations of window placement will be blended using siding that matches the existing. Exterior doors will be steel and will match the style of the existing exterior doors.

- ii. *The scale and surface area of parking driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.*

No additional pavement or parking areas are required.

JEWELL & BULGER, P.A.

Attorneys at Law

477 Congress Street, Suite 1104

Portland, ME 04101-3453

T: (207) 774-6665

F: (207) 774-1626

Thomas F. Jewell, Esq.

tjewell@jewellandbulger.com

Paul S. Bulger, Esq.

pbulger@jewellandbulger.com

December 1, 2015

City of Portland
Dept. of Planning & Development
ATTN: Anne Machado, Code Enforcement Director
389 Congress Street, Room 315
Portland, ME 04101

RE: Application for Interpretation
Portland Zoning Ordinance Sec. 14-118(a)5(a)

Dear Ms. Machado:

What follows is a request for interpretation of the newly enacted 14-118(a)5(a). This appeal is filed on behalf of Christopher Hickey, owner of property located at 12-14 Alba Street, located in the R5 zone in Portland

The property currently functions as a 2-family with 2,000 square feet of vacant space at one time occupied by 2 additional units gutted following a fire. The property was granted a variance allowing 2 units in 1999 and is therefore a legal 2 unit. The additional 2,000 square feet remain unused and unoccupied.

Text of Section 14-118(a)5(a)

The text of Section 14-118(a)5(a) (attached) permits additional dwelling units on a lot, but not more than two additional dwelling units on a lot above what ***would otherwise be permitted***. (Italicized for emphasis).

Therefore, the question for interpretation is whether “what would otherwise be permitted” applies to the existing legal 2 unit use permitted by variance, plus an additional 2 units. Or, on the other hand, whether “otherwise permitted” refers to the standards in the R-5 zone without regard to the variance.

Interpretation

We submit that the 2 family use is a legal and permitted in the zone and is therefore “otherwise permitted”, and that, therefore, he is entitled to an additional 2 units under the language of 14-118(a)5(a).

The basis for that interpretation is three-fold.

1. A use permitted by variance becomes conforming under the ordinance that authorizes the issuance of the variance. Sawyer Environmental Recovery Facilitation, Inc. v. Town of Hampden, 2000 ME. 179 760 A.2d 257. The lot is therefore conforming for 2 units and the new provision allows the addition of 2 additional units, provided the use otherwise meets the space and bulk provisions of 14-118, the income limits and parking requirements, which it clearly will under the applicant's proposal. (See the application);

2. The ordinance adds no qualifying language and any ambiguity must be interpreted in favor of the applicant. As stated by the Law Court:

When interpreting an ordinance, we look first to the plain meaning of the language in the ordinance and give any undefined terms of their common and generally accepted meaning unless the context clearly indicates otherwise. *Lakeside at Pleasant Mountain Condominium Association v. Town of Bridgton*, 974 A.2d 893 (Me. 2009).

In one of the earliest interpretations of a zoning ordinance in Maine, *Toulouse v. Board of Zoning Adjustment*, 87 A.2d 670 (Me. 1954), which is still often cited for the basic approach to the interpretation of a zoning ordinance, the Maine Law Court stated:

Before the adoption of modern zoning laws, the owners of property were restricted in the use of their property only by prohibitions of use recognized by the common law, or statute, as detrimental to the rights of the public. The restrictions of zoning statutes and zoning ordinances authorized by statute are in derogation to the common law *and should be strictly construed*.

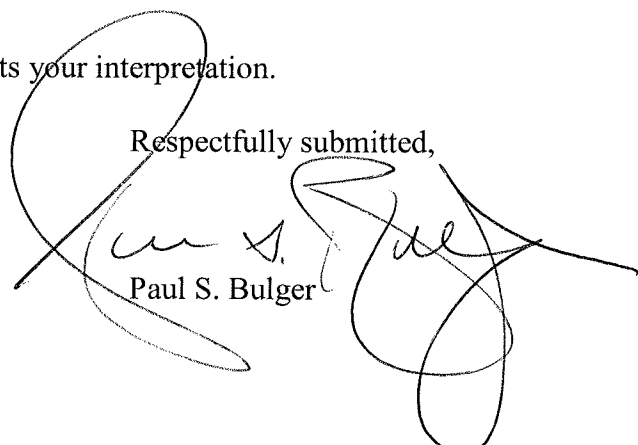
The provision, 114-18(a)5(a) does not define or qualify the meaning of "otherwise permitted" and must be given its plain meaning.

3. The purpose of the change in the ordinance is to advance and promote housing in the City of Portland, and the ordinance Section 14-118(a)5(a) must be interpreted in a way that will advance those legislative intendments.

The application otherwise conforms with the requirements of Section 14-118(a) in all respects.

In conclusion, the applicant requests your interpretation.

Respectfully submitted,


Paul S. Bulger

December 1, 2015

Page 3

PSB/cmk

Enclosures



Jeff Levine, AICP, Director

Ann Machado, Zoning Administrator

December 7, 2015

Paul Bulger, Esq.
Jewell & Bulger, P.A.
477 Congress Street, Suite 1104
Portland, ME 04101-3453

Re: Interpretation of § 14-118(a)(5)(a) for Christopher Hickey at 12-14 Alba Street, 133-C-013

Dear Attorney Bulger,

I am in receipt of your letter, dated December 1, 2015, requesting a determination that your interpretation of § 14-118(a)(5)(a) as it relates to 12-14 Alba Street, Portland Maine (the "Property") is correct.

I have researched the history of the Property. The pre-1957 Assessor's card shows that the building was used as a residential four (4) unit building. This use appears to have been maintained until there was a fire in 1986. At that point the building was vacated. The building remained vacant for at least three years and therefore lost the nonconforming right to be four dwelling units. The Zoning Board of Appeals confirmed this on April 20, 1989 by upholding the Building Inspection Services decision that the nonconforming use was abandoned one year after the building became vacant. On May 25, 1989, the Zoning Board of Appeals granted a space and bulk variance to allow the building to be converted to a two family dwelling. On June 1, 1989 a building permit (#002167) was issued for interior renovations to make the building a two family. The front of the building has been occupied by these two dwelling units since then with the rear of the building remaining empty.

12-14 Alba Street is located in the R-5 residential zone. § 14-118(a)(5) allows the use of a space that has existed as of September 3, 2008 "to accommodate additional dwelling units" as long as certain conditions are met. § 14-118(a)(5)(a) states that "this section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units above what would otherwise be permitted". The legal use of the Property is a two family based on the space and bulk appeal that was granted on May 25, 1989 and the building permit that was issued on June 1, 1989. Since this is the legal use of the Property, it is the permitted use and therefore two more dwelling units could be added to the property under § 14-118(a)(5)(a), and the interpretation as stated in the letter dated December 1, 2015 is correct.

If you have any questions regarding this matter, please do not hesitate to contact me.

Portland, Maine



Yes. Life's good here.

Planning & Urban Development Department

Jeff Levine, AICP, Director

Ann Machado, Zoning Administrator

Yours truly,

A handwritten signature in black ink, appearing to read "ABM", followed by a long horizontal flourish.

Ann B. Machado

Zoning Administrator

City of Portland, Maine

amachado@portlandmaine.gov

207.874.8709

(9)

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



MERRILL S. SELTZER
Chairman

JOHN C. KNOX
Secretary

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

12-14 Alba Street

May 30, 1989

Mr. Nicholas J. Sangillo
2 Clinton Street
Portland, Maine 04103

Dear Mr. Sangillo:

At the meeting of the Board of Appeals on Thursday evening, May 25, 1989, the Board voted by a unanimous vote of six members present to grant your request for a variance for the building at 12-14 Alba Street in the R-5 Residence Zone, which would enable the building to be converted to a two family dwelling, following the approval of a building permit.

A certificate of variance will be prepared to accompany this letter as an enclosure with the copy of the Board's decision. Your application for a building permit may now be processed. Please have the enclosed certificate of variance recorded within 30 days from the date of its approval at the Cumberland County Registry of Deeds, 142 Federal Street, in Portland.

Sincerely,

William D. Giroux
William D. Giroux
Zoning Enforcement Officer

Enclosures: Copy of Board's Decision
Certificate of Variance

cc: Merrill S. Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director, Planning & Urban Development
P. Samuel Hoffses, Chief, Inspection Services
Kathleen Taylor, Code Enforcement Officer
Charles A. Lane, Associate Corporation Counsel
Warren J. Turner, Administrative Assistant

CITY OF PORTLAND, MAINE
MEMORANDUM

10

TO: Jane Durgin, City Clerk
FROM: Warren Turner, Administrative Assistant-Inspection Services
SUBJECT: Report of Actions Taken at the Board of Appeals Meeting on May 25, 1989

Warren J. Turner

DATE: May 31, 1989

Chairman Merrill Seltzer called the meeting to order at 7:00 P.M. on Thursday evening, May 25, 1989, in Room 209, City Hall, Portland, Maine. There were six members present. Mr. Christopher Dinan was absent.

Unfinished Business

Interpretation Appeal:

Corner of Island & Welch Streets, Peaks Island, William A. Bonn, owner, requested an interpretation appeal as to whether the Board would uphold the decision of the Code Enforcement Officer regarding possible conversion of the former Innes House to a two family dwelling. The Board voted by a unanimous vote of six members present to deny this appeal.

Conditional Use Appeal

Corner of Island & Welch Streets, Peaks Island, William Bonn, owner, was granted this appeal to permit a change of use from single to two family for the building formerly known as the Inness House at the above address by a vote of 6 to 0.

New Business

Conditional Use Appeal

1093 Washington Avenue, Mr. and Mrs. James Ascanio, owners, were granted their appeal authorizing a day care center for 20 to 24 children at the above address by a vote of 6 to 0 subject to the condition that adequate turn around space be provided.

Variance, Space and Bulk:

12-14 Alba Street, Mr. Nicholas J. Sangillo, owner, was granted his request by a unanimous vote of six members, for the building at 12-14 Alba Street allowing it to be occupied as a 2 family dwelling. Formerly a four unit apartment house, the lot contains only 5,500 square feet of land area in the R-5 Residence Zone.

The meeting was adjourned at 8:25 P.M.

Enclosures: Agenda for May 25th
Copy of Decisions

12-14 Alba Street Conditional Use Application



Neighborhood

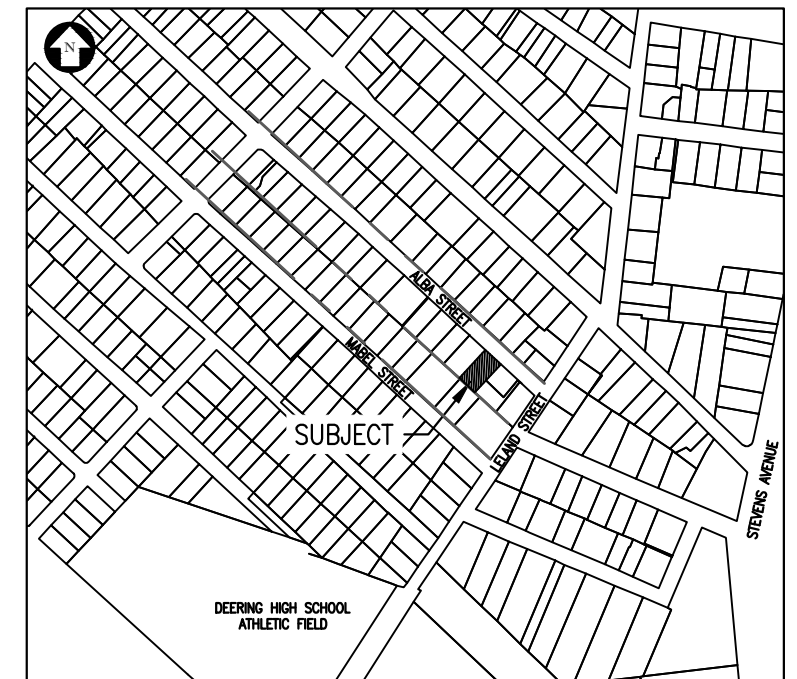
Portland
Maine

Prepared for:

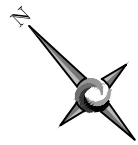
Emily Hickey
5 Greenway Drive
Falmouth, Maine 04105

Exhibit 1 - Permit Plan Set

Revision C 11/18/15



Locus Map
1"=500'



ALBA STREET

LELAND STREET

N/F
JOSEPH P. HUGHES
11548/353

ANTHONY B. & EVELYN C. ROLOFF
to
EMILY HICKEY
MARCH 9, 2007
24914/114

N/F
ALEXANDER THORNTON
7853/55

N/F
LENORA F. LEIBOWITZ
23175/320

N/F
RANA N. & GERALD O'CONNOR
12634/274

N/F
JILLIAN M. LARIVIERE
32493/82



SCALE: 1"=20'

12-14 Alba Street Conditional Use
City of Portland, Maine

Emily Hickey
5 Greenway Drive, Falmouth, Maine 04105
Telephone: 207-274-2628, ehickey@trcsolutions.com

DWN: CMH

CKD:

APVD:

DATE: 11/18/15

JOB #:

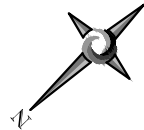
DATE

REVISIONS

VICINITY PLAN

SHEET NUMBER

ALBA 3-2



PRESUMED EXISTING 8'
STREETLINE SETBACK

EXISTING
17.5' X 47.5' PARKING AREA

EXISTING WOOD
DECK AND STAIR

EXISTING WOOD
DECK AND STAIR

EXISTING
30' X 43' STRUCTURE
EXISTING TWO UNITS

PROPOSED 3' PATH

EXISTING
25' X 40' STRUCTURE
PROPOSED TWO UNITS

EXISTING 7' REAR SETBACK
(NO CHANGE)

EXISTING 7' NORTHWEST SIDE SETBACK
(NO CHANGE)

PROPOSED APPROX. 3'X5' EXTERIOR STOOP

55'

100'

NOTES

1. TOTAL LOT AREA = 5500 S.F.



SCALE: 1"=10'

12-14 Alba Street Conditional Use
City of Portland, Maine

Emily Hickey
5 Greenway Drive, Falmouth, Maine 04105
Telephone: 207-274-2628, ehickey@trcsolutions.com

DWN: CMH

CKD:

APVD:

DATE: 11/18/15

JOB #:

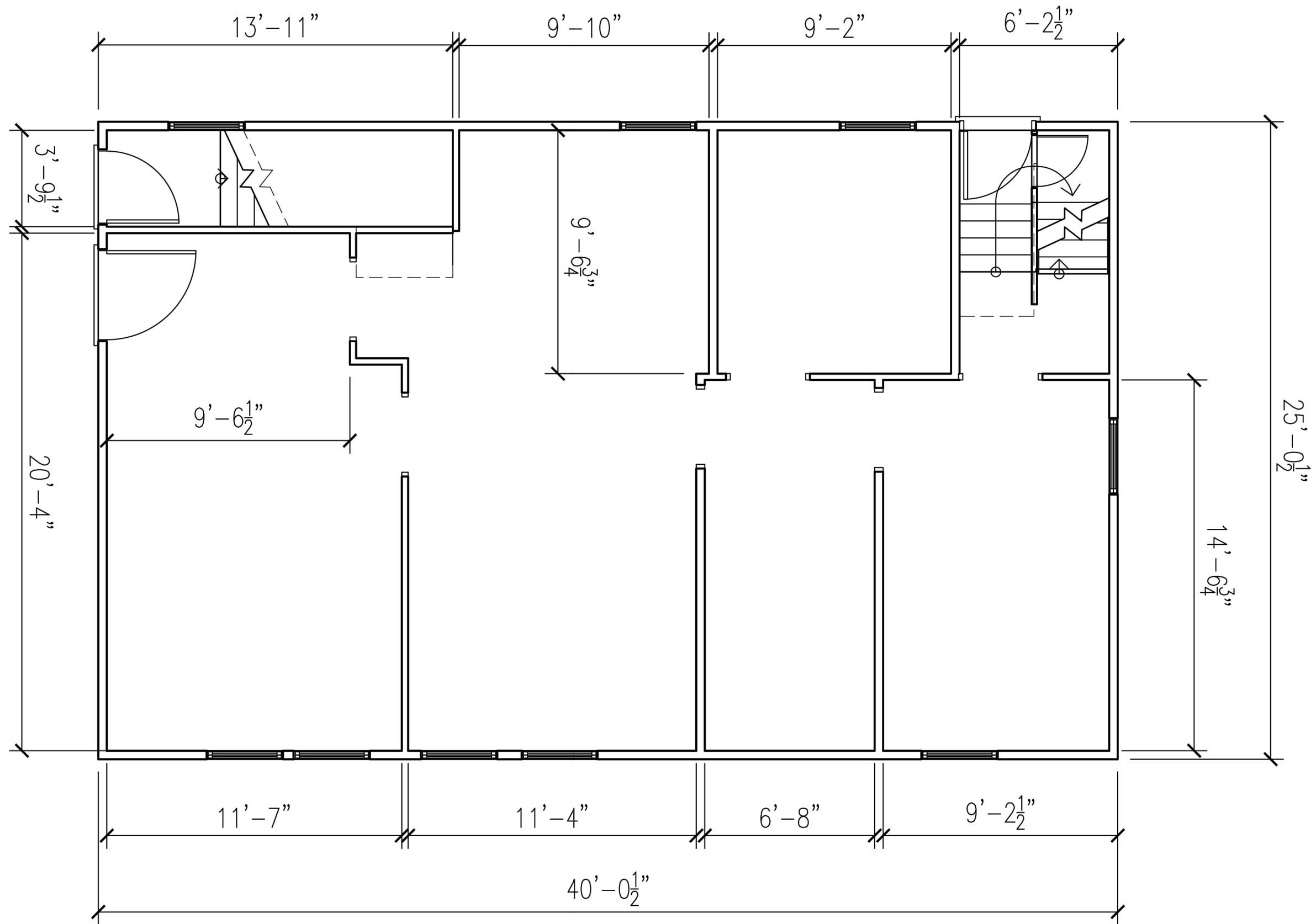
DATE

REVISIONS

PROPERTY PLAN

SHEET NUMBER

ALBA 3-3



SCALE: $\frac{1}{4}" = 1'-0"$

12-14 Alba Street Conditional use
City of Portland, Maine

Emily Hickey
5 Greenway Drive, Falmouth, Maine 04105
Telephone: 207-274-2628, chickey@trcsolutions.com

DWN: CMH

CKD:

APVD:

DATE: 11/18/15

JOB #:

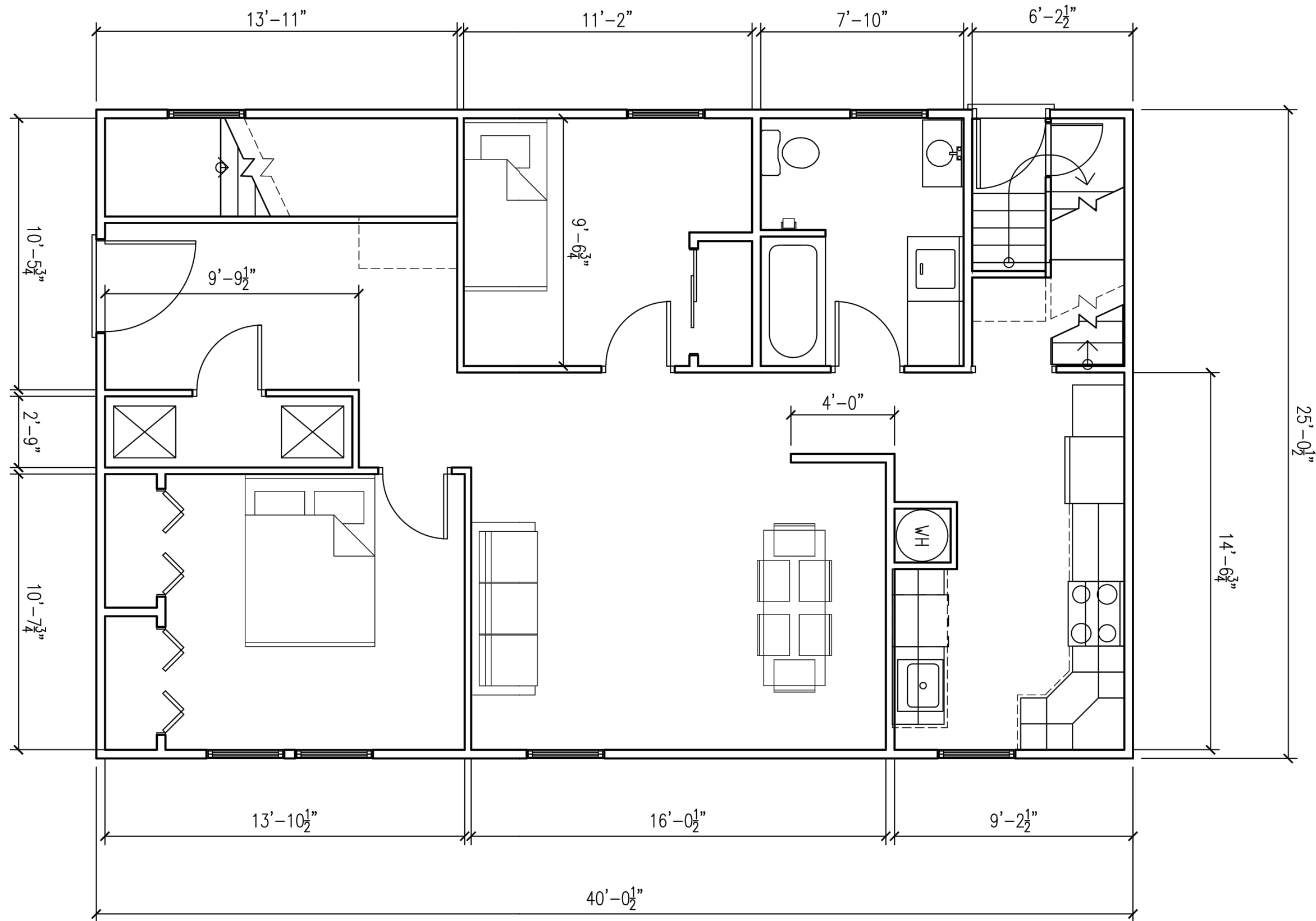
DATE

REVISIONS

FIRST FLOOR
EXISTING PLAN

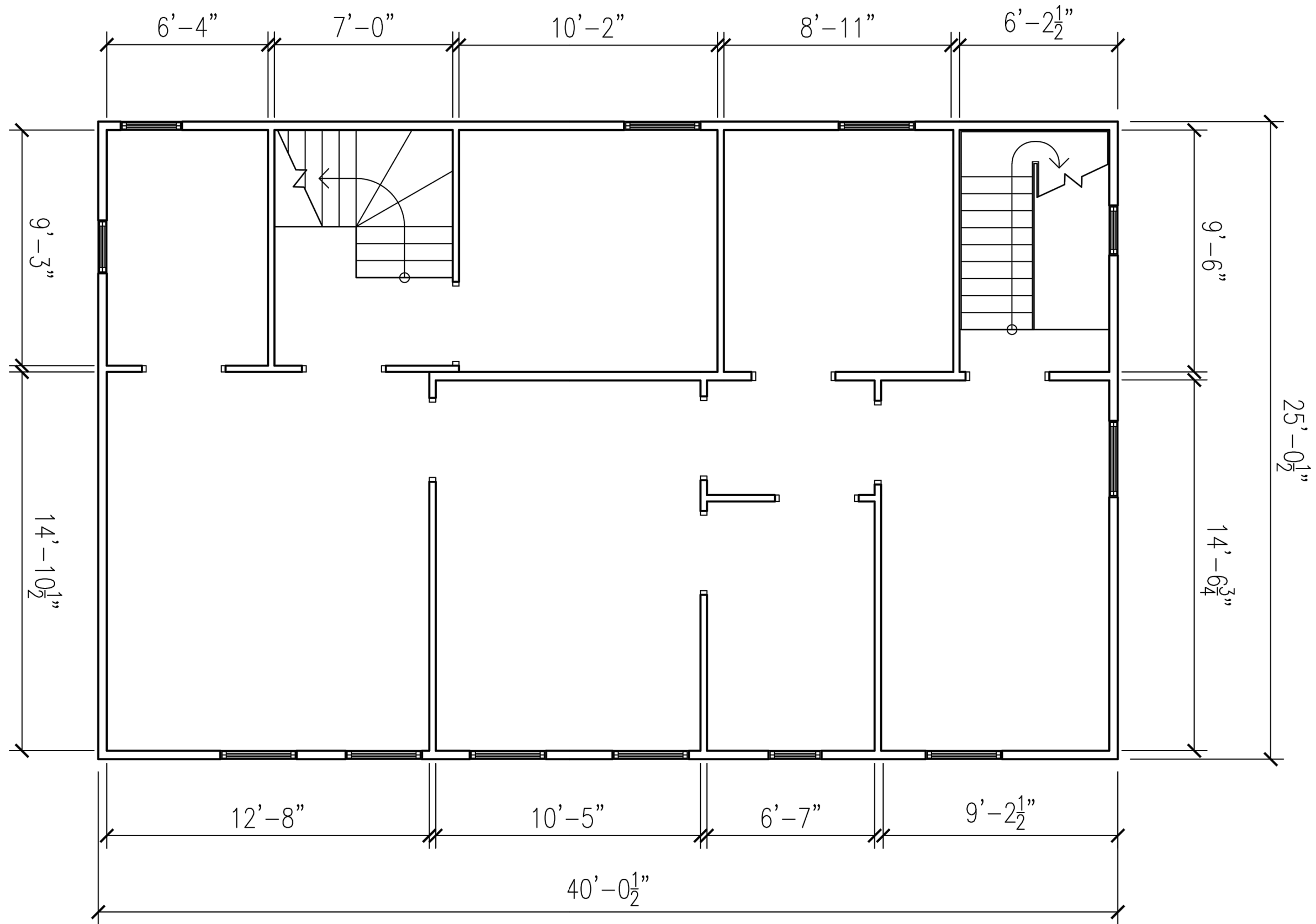
SHEET NUMBER

ALBA 4-1



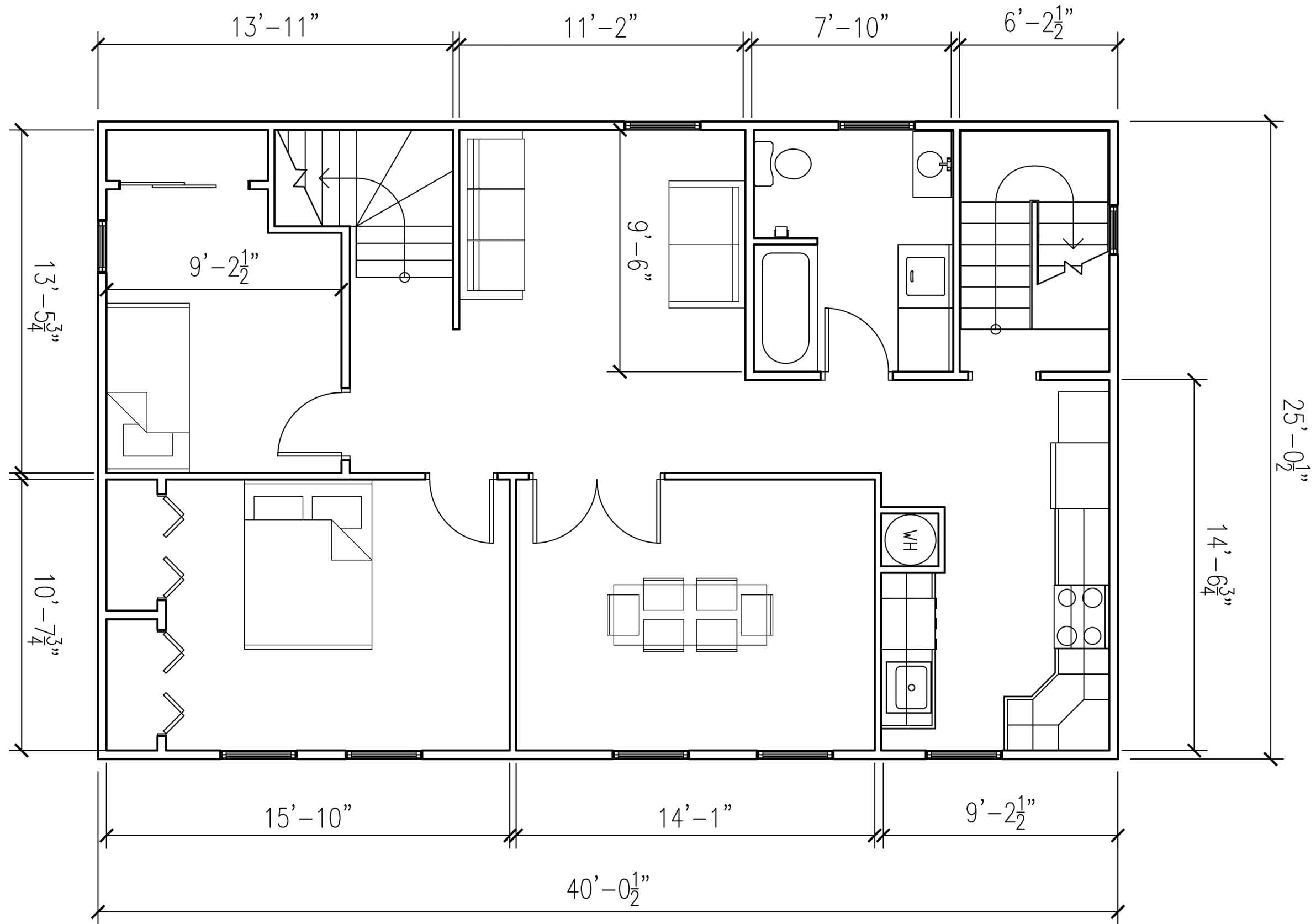
SCALE: 1/4" = 1'-0"

12-14 Alba Street Conditional Use City of Portland, Maine					DATE	REVISIONS	FIRST FLOOR CONCEPT PLAN
Emily Hickey 5 Greenway Drive, Falmouth, Maine 04105 Telephone: 207-274-2628, ehickey@trcsolutions.com							SHEET NUMBER
DWN: CMH	CKD:	APVD:	DATE: 11/18/15	JOB #:			ALBA 4-2



SCALE: 1/4" = 1'-0"

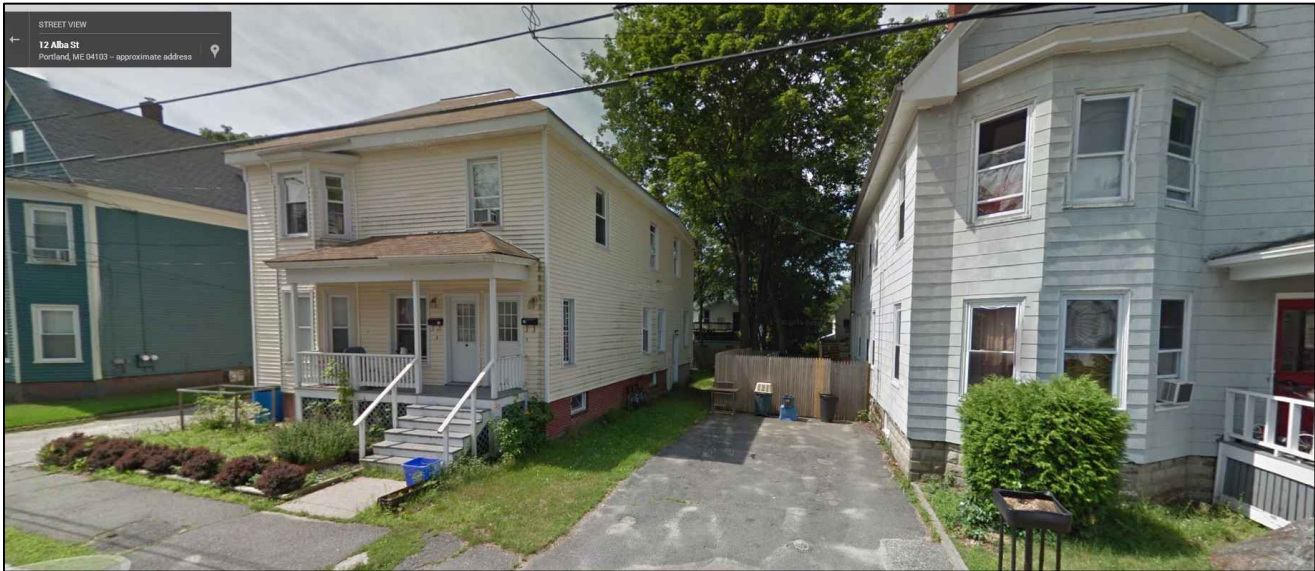
12-14 Alba Street Conditional Use City of Portland, Maine				DATE	REVISIONS	SECOND FLOOR EXISTING PLAN
Emily Hickey 5 Greenway Drive, Falmouth, Maine 04105 Telephone: 207-274-2628, ehickey@trcsolutions.com						SHEET NUMBER
						ALBA 4-3
DWN: CMH	CKD:	APVD:	DATE: 11/18/15	JOB #:		



SCALE: 1/4" = 1'-0"

12-14 Alba Street Conditional Use City of Portland, Maine Emily Hickey 5 Greenway Drive, Falmouth, Maine 04105 Telephone: 207-274-2628, ehickey@trcsolutions.com					DATE	REVISIONS	SECOND FLOOR CONCEPT PLAN
DWN: CMH					CKD:	APVD:	SHEET NUMBER
					DATE: 11/18/15	JOB #:	ALBA 4-4





STREET VIEW 1



STREET VIEW 2



BUILDING EXTERIOR



BUILDING INTERIOR



THEN & NOW

WARRANTY DEED

Know all Persons by these Presents that we, **Anthony B. Roloff and Evelyn C. Roloff**, of the Town/City of South Portland, State of Maine, in consideration of one dollar and other valuable consideration paid by **Emily Hickey**, whose mailing address is 14 Alba Street, Portland, ME 04103 the receipt whereof we do hereby acknowledge do hereby **give, grant, bargain, sell and convey** unto the said **Emily Hickey**, her heirs and assigns forever,

A certain lot or parcel of land with the buildings thereon, located in the city of Portland, County of Cumberland and State of Maine, on the southwesterly side of Alba Street and bounded and described as follows:

Commencing at a point in the southwesterly side of Alba Street one hundred twenty (120) feet northwesterly from the northwesterly side of Leland Street measured on the southwesterly side of Alba Street as indicated on a plan of E. Vinton Earle and the Richardson Land Company recorded in the Cumberland County Registry of Deeds, in Plan Book 8, Page 7; thence northwesterly along Alba Street fifty-five (55) feet; thence southwesterly and parallel with the northwesterly side line of lot "L" as shown on said Plan, one hundred (100) feet to a point; thence southeasterly and parallel with Alba Street fifty-five (55) feet; thence northeasterly on a line at right angles to Alba Street to the point of beginning. Being lot marked "L" and five (5) feet off the southeasterly portion of lot marked "M", as indicated on said Plan.

Meaning and intending to convey and hereby conveying the same premises conveyed to Anthony B. Roloff and Evelyn C. Roloff by deed of Nicholas J. Sangillo dated March 5, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8780, Page 300.

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said **Emily Hickey**, her heirs and assigns, to them and their use and behoof forever.

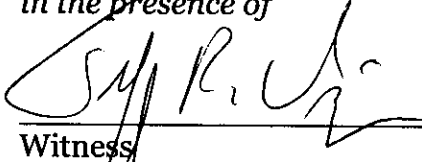
And we do **covenant** with the said Grantee(s), her heirs and assigns, that we are lawfully seized in fee of the premises, that they are free of all encumbrances, that we have good right to sell and convey the same to the said Grantee(s) to hold as aforesaid; and

that we and our heirs shall and will **warrant and defend** the same to the said Grantee(s), her heirs and assigns forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, we, the said **Anthony B. Roloff and Evelyn C.**

Roloff, have hereunto set our hand and seal this 9th day of March, 2007.

*Signed, Sealed and Delivered
in the presence of*



Witness

Same

Witness



Anthony B. Roloff



Evelyn C. Roloff

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

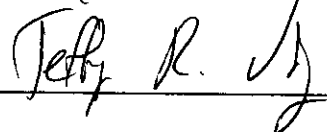
Dated: March 9, 2007

Personally appeared the above-named Anthony B. Roloff and Evelyn C. Roloff and acknowledged the foregoing instrument to be their free act and deed.

Before me,



Attorney at Law/Notary Public

Printed name: 

Received
Recorded Register of Deeds
Mar 12, 2007 01:00:34P
Cumberland County
Pamela E. Lovley

To: Portland Zoning Board of Appeals
From: Emily Hickey
Date: 11/17/2015
Re: 12-14 Alba Street Conditional Use Application

Dear Zoning Board,

My name is Emily Hickey and I am the record owner of the property at 12-14 Alba Street in Portland, Maine. The building was purchased in 2007 and although my husband, Christopher, and I are both named on the mortgage, I hold title as an individual.

This letter will serve as notice and permission for my husband and/or our attorney, Paul Bulger, Esq. to present the application to the board and to handle any and all related matters.

Most Sincerely,



Emily Hickey