

1. Agenda

Documents: [1-21-16 AGENDA.PDF](#)

2. 44 Mayo Street (81 E. Oxford St.)

Documents: [44 MAYO ST COND USE APPEAL.PDF](#)

3. 970 Forest Avenue

Documents: [970 FOREST AVE APPLICATION PACKET.PDF](#)

4. 50 Industrial Way

Documents: [INTERPRETATION APPEAL.PDF](#)

5. 1877 Congress Street

Documents: [CONDITIONAL USE APPEAL APPLICATION - 1877 CONGRESS ST.PDF](#)

5.I. Citizen E-Mails

Documents: [CITIZEN E-MAILS.PDF](#)

5.II. Letter

Documents: [ZBA LTR RE ADDITIONAL INFORMATION.PDF](#)

5.III. Generator Sound Information

Documents: [GENERATOR SOUND INFORMATION.PDF](#)

5.IV. Visual Simulations

Documents: [VISUAL SIMULATIONS.PDF](#)

5.V. Letter

Documents: [2016 01 14 LTR TO PORTLAND ZBA.PDF](#)

5.VI. Letter

Documents: [LETTER FROM STROUDWATER VILLAGE ASSOCIATION 1-20-16.PDF](#)

5.VII. Letter

Documents: [VERIZON WIRELESS SUBMISSION 1_20_16.PDF](#)

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

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

APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, January 21, 2016, 6:30 p.m., City Council Chambers, City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

1. New Business:

A. Conditional Use Appeal:

44 Mayo Street (81 East Oxford Street), Bayside Anchor Apartments, LP, owner, Tax Map 022, Block I, Lot 001, R-7 Compact Urban Residential Overlay Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(4) to operate a Head Start nursery school within a new apartment building at this site. Representing the appeal is Mark Adelson of the Portland Housing Development Corporation/Bayside Anchor Apartments, LP and Patrick Carroll of Carroll Associates Landscape Architects.

B. Conditional Use Appeal:

970 Forest Avenue, North Deering Children's Academy, lessee, Tax Map 143, Block B, Lot 001, R-P Residence-Professional Zone: The applicant is seeking a Conditional Use Appeal under section 14-147.5(e) to operate a licensed child care center for up to 80 children at an existing commercial building, which was most recently used for medical offices. Representing the appeal is Gina Kostopoulos of the North Deering Children's Academy.

2. Old 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). The appeal was tabled by the board on January 7, 2016 on the recommendation of the Planning and Urban Development Department. Representing the appeal is Gordon R. Smith, Esq. and Jill Perry from Allagash Brewing.

B. Conditional Use Appeal:

1877 Congress St, Verizon Wireless, buyer, Tax Map 217, Block A, Lot 010, R-2 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-78(c)(1) to construct a thirty foot by fifty five foot telephone equipment shelter and pad-mounted generator, transformer, and HVAC unit. The shelter and associated equipment will be accessed by a new twelve foot wide gravel driveway and parking area. The appeal was tabled

by the board on December 3, 2015 pending more information. Representing the appeal is the buyer and Kelly B. Boden, Esq.

3. Adjournment



December 30, 2015

Ms. Ann Machado, Zoning Administrator
City of Portland
389 Congress Street
Portland, ME 04101

RE: Bayside Anchor Conditional Use Permit- Application for Extension of Approval

Dear Ann,

On behalf of the Portland Housing Development Corporation and Bayside Anchor Apartments, LP, we are submitting an Application for Conditional Use related to the proposed Bayside Anchor Project located at 81 East Oxford Street. A Conditional Use Permit was originally granted by the Zoning Board of Appeals on July 17, 2014, but has expired over the 18 months it has taken for the project team to design the project and secure necessary State approvals and financing. We are now ready to begin construction of the project, and request an extension of the original Conditional Use Permit Approval to a date of July 1, 2017 to allow full construction of the building and commencement of the nursery school (Headstart) use.

As described in the previous application, this project entails new construction of 45 residential apartments to be built on the corner of East Oxford and Boyd Streets, within the existing East Bayside campus and managed by the Portland Housing Corporation. The proposed building is envisioned to be a community focus for the neighborhood and will consolidate several existing community facilities, including relocation of the Head Start program from its existing space on Boyd Street. This program is considered a Nursery School by the City Zoning Ordinance, and as such requires a Conditional Use Permit.

The previous application describes the need, function and operation of the Head Start Program in the East Bayside Community, and a copy of the full application is attached for reference. The project is substantially unchanged from what was described in that original application, however the following modifications have occurred to the project since its approval in July, 2014:

1. The Ownership has been changed to Bayside Anchor Apartments, LP, to reflect the official entity that will own and manage the project. Bayside Anchor Apartments, LP is a subsidiary Portland Housing Development Corporation.
2. The Site Plan has been slightly modified in the following ways:
 - a. The sidewalk running along the west side of the property has been eliminated.
 - b. The plaza has been slightly reconfigured to provide ADA access to the Head Start doorway.
 - c. The sidewalks along Oxford and Boyd Streets have been reconfigured to eliminate the treegrates and provide a grass esplanade for tree plantings.
 - d. The step/ ramp into the Head Start space has been eliminated and modified to provide grade access.
3. The Building Plans have been slightly modified in the following ways:
 - a. Building size has been slightly reduced.
 - b. Building entrances have been reconfigured.
 - c. Head Start space has been slightly reconfigured.

Attached please find the following submission materials:

1. New Application for Conditional Use.
2. Copies of revised Plot and Building Plans.
3. Zoning Board Decision from July 17, 2014.
4. The full application that was previously submitted in June, 2014.
5. Check for \$ 150.00 to cover Application and Processing Fees.

We feel strongly that the Application continues to meet the Conditional Use requirements of the R-7 zone for Nursery Schools and look forward to meeting with the Zoning Board of Appeals to discuss our request for an extension of the Conditional Use Permit in greater detail. Please do not hesitate to contact me if you have questions or need additional information.

With Regards,
CARROLL ASSOCIATES

A handwritten signature in dark ink, appearing to read 'P. Carroll', with a long horizontal flourish extending to the right.

Patrick J. Carroll, Principal

CC: Mark Adelson, PHA
Brooks More, Avesta
Gary Vogel, Drummund Woodsum
Rick Knowland, City of Portland

Department of Planning & Urban Development

Ann Machado
Zoning Administrator

Jeff Levine
Director Planning & Urban Development



CITY OF PORTLAND ZONING BOARD OF APPEALS
Conditional Use Appeal Application

Applicant Information:

Mark Adelson
NAME
Portland Housing Development Corporation
Bayside Anchor Apartments, LP
BUSINESS NAME

14 Baxter Boulevard
Portland, ME 04101
ADDRESS

207-773-4753
TELEPHONE #

Owner

APPLICANT'S RIGHT, TITLE OR INTEREST
(eg: owner, purchaser, etc)

R-7

CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

Vacant/ prior use as parking lot

Subject Property Information

81 East Oxford Street
PROPERTY ADDRESS

Map 22, Block 1, Lots 4 and 1
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

Same as Applicant
NAME

ADDRESS

CONDITIONAL USE AUTHORIZED BY

SECTION 14 - 137 _____

TYPE OF CONDITIONAL USE PROPOSED:

Nursery School

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 insanitary 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.


SIGNATURE OF APPLICANT

12/29/2015
DATE



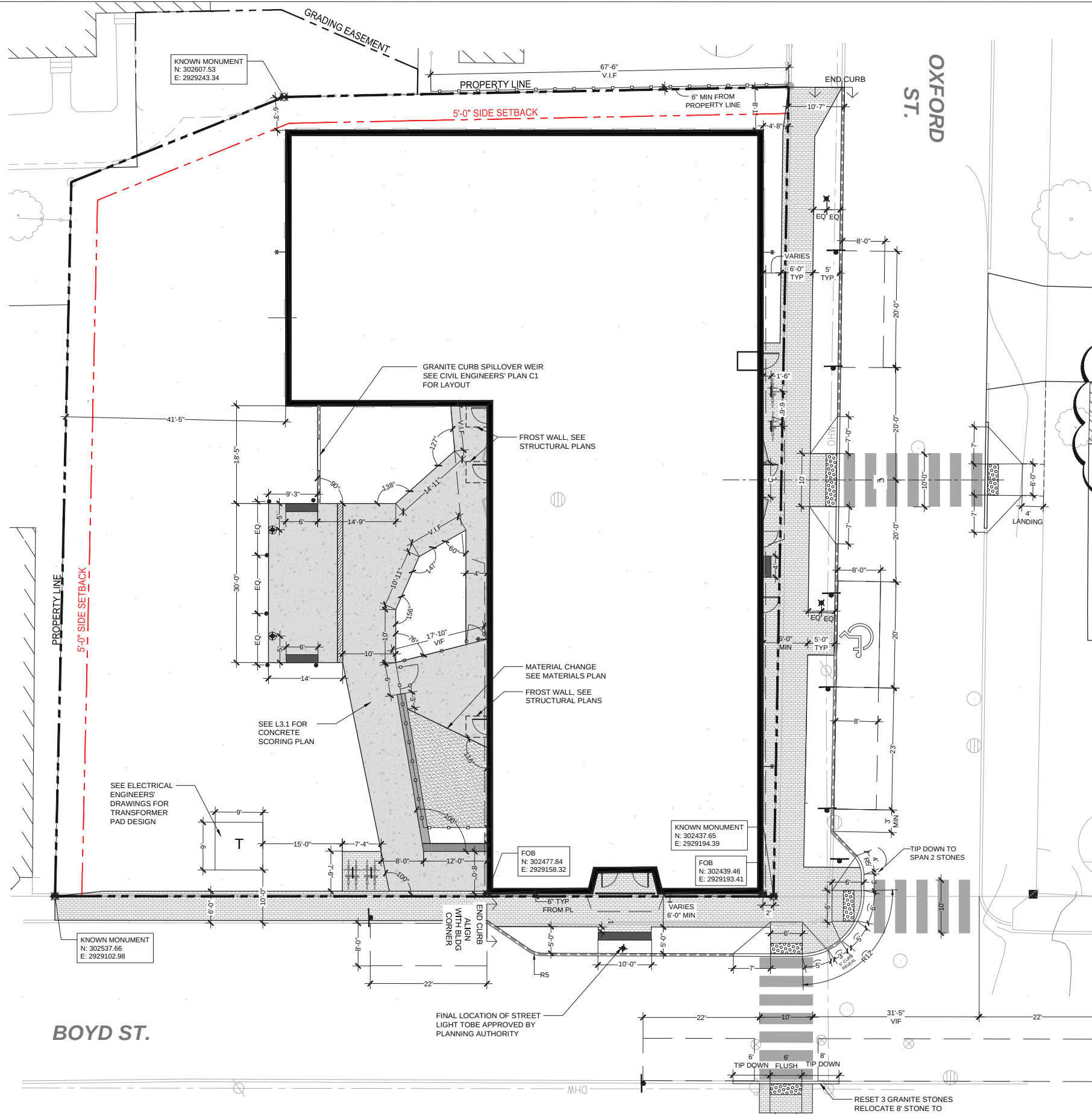
LOCUS
N.T.S.

LEGEND (EXISTING)

- IRON PIPE OR ROD FOUND
- MONUMENT FOUND
- WATER VALVE
- HYDRANT
- UTILITY POLE
- MANHOLE
- MANHOLE
- SIGN
- DECIDUOUS TREE
- FENCE
- CURB
- OHW
- OVERHEAD WIRES
- EXISTING CONTOURS

(PROPOSED)

- 7" VERTICAL GRANITE CURB
- FLUSH / TRANSITION GRANITE CURB
- NEW TREE
- RELOCATED TREE
- SHRUBS
- LAWN
- RAIN GARDEN
- GROUND COVER
- BIT. CONC. PAVING
- BRICK PAVING
- CONCRETE PAVING
- PLAY SURFACING
- WALL W/ WOOD TOP
- WALL
- BENCH, TYP
- BKE RACK
- POLE LIGHT
- BOLLARD LIGHT
- SIGN
- FENCE



PROJECT LAYOUT:

- BUILDING & SITE LAYOUT IS BASED ON NORTHING & EASTING COORDINATES PER TOPOGRAPHIC SITE SURVEY COMPLETED BY OWEN HASKELL, INC. MAY 7, 2013, UPDATED MAY 26, 2015 AND JUNE 22, 2015. FIELD CONDITIONS MAY VARY FROM WHAT IS DEPICTED ON THE PLANS.
- DIMENSIONS TO PROPERTY LINES ARE FOR REFERENCE ONLY AND NOT TO BE USED TO LAYOUT BUILDING.
- ALL WORK SHALL CONFORM TO THE APPLICABLE CODES AND ORDINANCES.
- CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD PRIOR TO CONSTRUCTION. ANY UNUSUAL CONDITIONS SHALL BE IMMEDIATELY REPORTED TO THE ATTENTION OF THE OWNER.
- THERE SHALL BE NO PAVEMENT MARKINGS FOR TEMPORARY PARKING SPACES, ANY MARKING ON PLANS ARE INTENDED TO SHOW LOCATION OF SPACES ONLY.

0' 10' 20'



SUBMITTED FOR CONDITIONAL USE PERMIT APPLICATION 12/30/2015

CONSTRUCTION SET

Project:
BAYSIDE ANCHOR
Portland Housing Development
Corporation
81 East Oxford Street
Portland, ME

Drawing: LAYOUT PLAN

CONDITIONAL USE PERMIT

Scale: 1"=10'

Drawn by: EPK

Date: July 2, 2014

Revised: 10.09.2015

L3.0



424 FORE ST., PORTLAND, ME 04101
P: 207-842-2888 F: 842-2828
JESSE@KAPLANTHOMPSON.COM



217 COMMERCIAL ST.
PORTLAND, ME 04101
P: 207.772.1552 F: 207.772.0712



75 YORK ST.
PORTLAND, ME 04101
P: 207.879.1838
F: 207.879.1822



400 COMMERCIAL ST. SUITE 404
PORTLAND, ME 04101
P: 207.773.4753
F: 207.772.3248



14 BAXTER BLVD
PORTLAND, ME 04103
P: 207.774.4753
F: 207.774.6471

c:\Users\JKay\Downloads\AE_Logo_CMYK (3).jpg

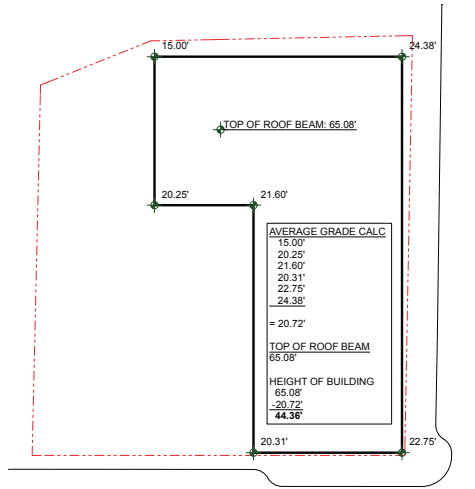
190 US Route One, PMB 346 Falmouth, Maine 04105
Phone: (207) 847-3445 Fax: (207) 847-3446

UNIT MIX: GROUND FLOOR	
Zone Category	Quantity
1 BR	4
EFFICIENCY	2
	6

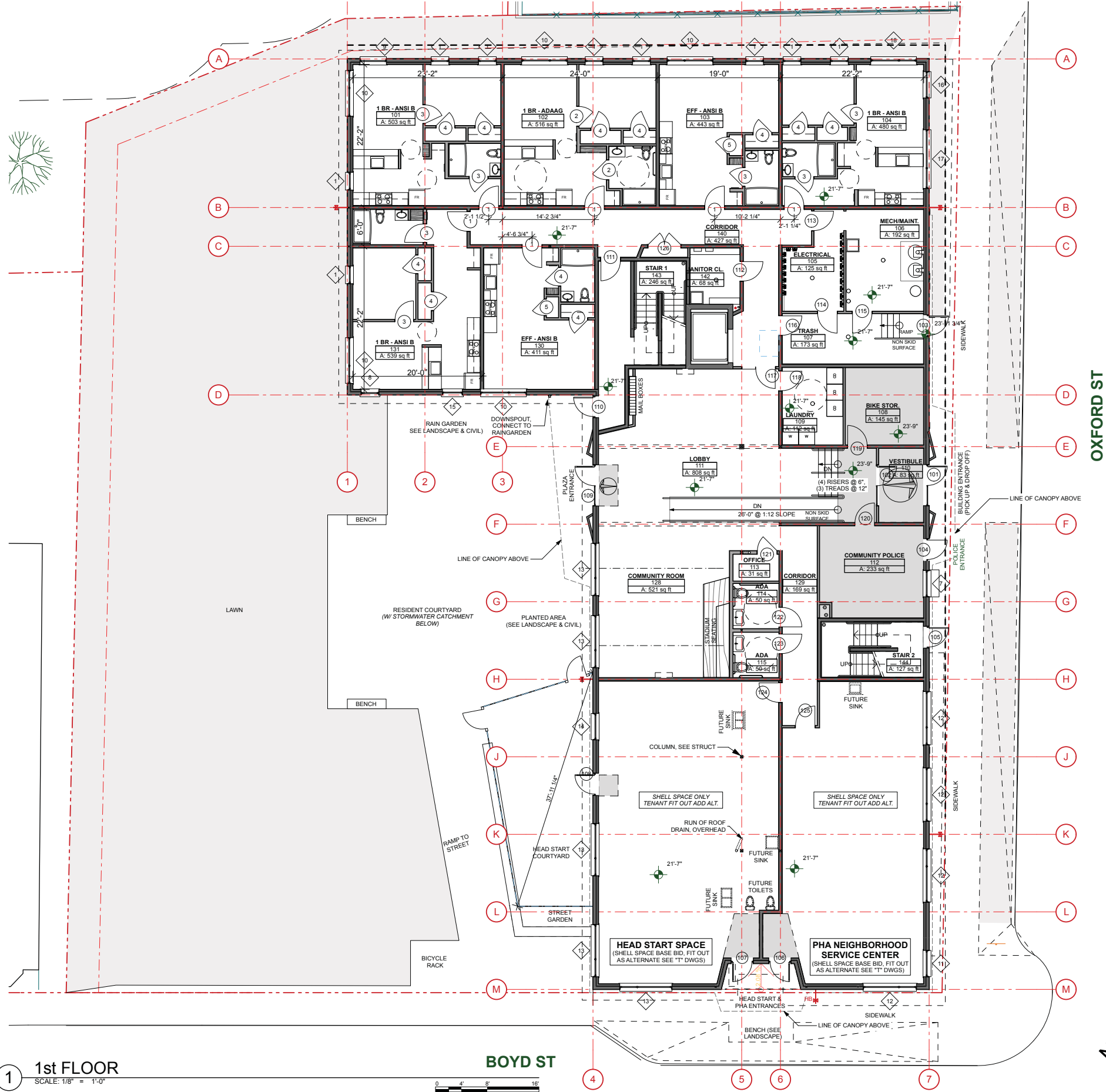
UNIT MIX: TOTAL	
Zone Category	Quantity
1 BR	34
2 BR	6
EFFICIENCY	5
	45

UNIT MIX: TOTAL BUILDING		
Floor (Story)	Zone Category	Quantity
1st FLOOR	1 BR	4
1st FLOOR	EFFICIENCY	2
2nd FLOOR	1 BR	10
2nd FLOOR	2 BR	2
2nd FLOOR	EFFICIENCY	1
3rd FLOOR	1 BR	10
3rd FLOOR	2 BR	2
3rd FLOOR	EFFICIENCY	1
4th FLOOR	1 BR	10
4th FLOOR	2 BR	2
4th FLOOR	EFFICIENCY	1
		45

GROUND FLOOR PROGRAM			
Room #	Room Name	Area	Type
100	GROSS AREA	9,423	GROSS AREA
101	1 BR - ANSI B	503	1 BR
102	1 BR - ADAAG	516	1 BR
103	EFF - ANSI B	443	EFFICIENCY
104	1 BR - ANSI B	480	1 BR
105	ELECTRICAL	125	UTILITY
106	MECH/MAINT.	192	UTILITY
107	TRASH	173	UTILITY
108	BIKE STOR.	145	UTILITY
109	LAUNDRY	112	UTILITY
110	VESTIBULE	83	CIRCULATION
111	LOBBY	808	CIRCULATION
112	COMMUNITY POLICE	233	COMMUNITY SERVICE FACILITY
113	OFFICE	31	COMMUNITY SERVICE FACILITY
114	ADA	50	COMMUNITY SERVICE FACILITY
115	ADA	50	COMMUNITY SERVICE FACILITY
128	COMMUNITY ROOM	521	COMMUNITY SERVICE FACILITY
129	CORRIDOR	169	COMMUNITY SERVICE FACILITY
130	EFF - ANSI B	411	EFFICIENCY
131	1 BR - ANSI B	539	1 BR
140	CORRIDOR	427	CIRCULATION
142	JANITOR CL.	68	UTILITY
143	STAIR 1	246	CIRCULATION
144	STAIR 2	127	CIRCULATION
T101	HEAD START CLASSROOM	738	TENANT SPACE
T102	HS DIRECTOR'S OFFICE	115	OFFICES
T103	HS MEETING & STORAGE	115	OFFICES
T104	HS WARMING KITCHEN	144	COMMUNITY SERVICE FACILITY
T105	HS MECH. CLOSET	39	COMMUNITY SERVICE FACILITY
T106	HS CHILDREN'S TOILET	61	COMMUNITY SERVICE FACILITY
T111	PHA RECEPTION	178	TENANT SPACE
T112	PHA OFFICES	347	TENANT SPACE
T113	PHA SM MEETING RM	95	MEETING ROOMS
T114	PHA LG MEETING RM	124	MEETING ROOMS
T115	PHA HOUSING OFFICER	103	OFFICES
T116	PHA PROPERTY MANAGER	102	OFFICES



2 BUILDING HEIGHT CALC
NOT TO SCALE



1 1st FLOOR
SCALE: 1/8" = 1'-0"

Portland, Maine



Yes. Life's good here.

Planning & Urban Development Department

Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

Patrick Carroll
Carroll Associates
217 Commercial Street, Suite 200
Portland, ME 04101

July 18, 2014

Re: 81 East Oxford Street – 022-I-001 & 004 – R-7 Compact Residential Overlay Zone

Dear Mr. Carroll & Mr. Adelson,

At the July 17, 2014 meeting, the Zoning Board of Appeals voted 4-0 to grant the Conditional Use Appeal for a nursery school to operate at 81 East Oxford Street. I am enclosing a copy of the Board's decision.

You will also find an invoice for the fees that are still owed for the legal ad and the notices for the appeal. Please submit your payment on receipt of this invoice. Your permit cannot be issued until your payment has been received.

You have six months from the date of the meeting, July 17, 2014, referenced under section 14-474(f) to obtain the building permit, or your Zoning Board approval will expire.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,


Ann B. Machado
Zoning Specialist

Cc File

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: July 18, 2014

RE: Action taken by the Zoning Board of Appeals on July 17, 2014

Members Present: Sara Moppin (acting chair), Donna Katsiaficas (acting secretary), William Getz and Kent Avery

Members Absent: Chip Gavin, Gordon Smith and Eric Larsson

1. New Business

A. Conditional Use Appeal:

159 State Street, The Children's Nursery School, lessee, Tax Map 045, Block A, Lot 026, R-6 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(4) to run a nursery school in part of the second floor of the building. Representing the appeal for the Children's Nursery School, the lessee, is Daniel Brouillette. **The Zoning Board of appeals voted 4-0 to grant the appeal to allow the nursery school to operate.**

B. Conditional Use Appeal:

75-87 Oxford Street & 35-41 Boyd Street, Portland Housing Development Corporation, buyer, Tax Map 022, Block I, Lots 001 & 004, R-6 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(4) to run a nursery school in part of the first floor of the new building at this site. Representing the appeal is Mark Adelson, from the Portland Housing Authority, the owner. **The Zoning Board of appeals voted 4-0 to grant the appeal to allow the nursery school to operate.**

Enclosure:

Decision for Agenda from July 17, 2014

One DVD

CC: Mark Rees, City Manager

Jeff Levine, AICP, Director Planning & Urban Development

Alex Jaegerman, Planning Division

Mary Davis, Housing and Neighborhood Services Division

*Kent Avery
William Cuty.
Sara Moppin
Danna Katerfies*

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

R-7 Compact Urban Residential Overlay Zone
Nursery School

Conditional Use Application (R-6 Standards to apply)

DECISION

Date of public hearing: July 17, 2014

Name and address of applicant: Mark Adelson
Portland Housing Dev. Corp./Bayside Anchor Dev.
14 Baxter Blvd.
Portland, ME 04101

Location of property under appeal: 81 East Oxford Street

For the Record:

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

*Mark Adelson - Portland Housing Development Corporation
President & Director PITA*

Pat Carroll - Landscape Architect.

*Robert Harris of Holm Ave. → wants dedicated parking spaces,
Present Campus is spread out, on street parking creates public
safety problems,*

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

Application, attached plans

Findings of Fact and Conclusions of Law:

This project is related to the proposed Bayside Anchor Project located at 81 Oxford Street, which entails new construction of 45 residential apartments, as well as consolidation of several existing community facilities. The applicant requests approval of use of part of this new facility for the existing Head Start program (currently at 58 Boyd Street) which serves primarily PHA residents. Approximately 1200 square feet will be used for the nursery school use.

A. Conditional Use Standards pursuant to Portland City Code §14-474(c)(2):

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.

Yes ☒ No ☐

Reason and supporting facts:

Program will be use primarily by residents of PHA. 75% of slots filled by PHA residents. 6 spaces for parking across St. There are normal business hours. Existing use - just being moved across the street.

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.

Yes ☒ No ☐

Reason and supporting facts:

Indoor "trash" room for trash disposal

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 or other allowable uses in the zone.

Yes ☒ No ☐

Reason and supporting facts:

Existing use being moved to this side
of street. No change in impact.
Dedicated loading/unloading space

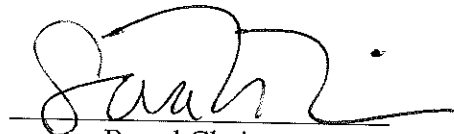
Conclusion: (check one) *mailed - Avery, second City*

☒ Option 1: The Board finds that all relevant standards (1 through 3) described in section A above have been satisfied and therefore GRANTS the application.

☐ Option 2: The Board finds that while all relevant standards (1 through 3) described in section A above 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:

☐ Option 3: The Board finds that not all relevant standards (1 through 3) described in section A above have been satisfied and therefore DENIES the application.

Dated: *7-17-14*


Board Chair

Present SARA Moppin - Donna Felix - Actg Sec. - Bill Gatz -
Actg Chan Karl Aron

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Absent Gordon Smith - Chip Giam - Eric Larsson

APPEAL AGENDA

6:30

The Board of Appeals will hold a public hearing on Thursday, July 17, 2014 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

1. New Business

A. Conditional Use Appeal:

159 State Street, The Children's Nursery School, lessee, Tax Map 045, Block A, Lot 026,

R-6 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(4) to run a nursery school in part of the second floor of the building.

Representing the appeal for the Children's Nursery School, the lessee, is Daniel Brouillette.

B. Conditional Use Appeal:

75-87 Oxford Street & 35-41 Boyd Street, Portland Housing Development Corporation,

buyer, Tax Map 022, Block I, Lots 001 & 004, R-6 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(4) to run a nursery school in

part of the first floor of the new building at this site. Representing the appeal is Mark Adelson, from the Portland Housing Authority, the owner.

2. Adjournment

7:00

R-7 overlay supposedly already

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director Planning & Urban Development



CITY OF PORTLAND ZONING BOARD OF APPEALS
Conditional Use Appeal Application

Applicant Information:

MARK ADELSON

NAME

PORTLAND HOUSING DEVELOPMENT CORPORATION

DAYSIDE ANCHOR DEVELOPMENT CO, LLC

BUSINESS NAME

14 BAXTER BOULEVARD

ADDRESS

PORTLAND, ME 04101

207. 773. 4753

TELEPHONE #

OWNER

APPLICANT'S RIGHT, TITLE OR INTEREST
(eg; owner, purchaser, etc)

R-7

CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

VACANT / PARKING LOT

Subject Property Information

816 1/2 OXFORD ST

PROPERTY ADDRESS

MAP 22, BLOCK 1, LOTS 4 & 1
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

NAME AS APPLICANT

NAME

ADDRESS

CONDITIONAL USE AUTHORIZED BY

SECTION 14 - 137

TYPE OF CONDITIONAL USE

PROPOSED:

NURSERY SCHOOL

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.

[Signature]
SIGNATURE OF APPLICANT

6/30/2012
DATE



June 30, 2014

Ms. Marge Schmuckal, Zoning Administrator
City of Portland
389 Congress Street
Portland, ME 04101

RE: Bayside Anchor Conditional Use Application

Dear Marge,

On behalf of the Portland Housing Development Corporation and Bayside Anchor Development Company, LLC we are submitting an Application for Conditional Use related to the proposed Bayside Anchor Project located at 81 Oxford Street.

This project entails new construction of 45 residential apartments to be built on the corner of East Oxford and Boyd Streets, within the existing East Bayside campus owned and managed by the Portland Housing Corporation. The proposed building is also envisioned as a community focus for the neighborhood and will consolidate several existing community facilities, including the Head Start program, the local residential management offices for Portland Housing, and a neighborhood policing office. These three functions currently exist in the immediate neighborhood but are proposed to be relocated to this new facility.

The Application being submitted is specific to the Head Start program use, which is considered a nursery school and as such requires a Conditional Use Permit. The Opportunity Alliance (TOA) will lease approximately 1200 square feet of space from the Bayside Anchor Apartments LP to house their Head Start and Childcare programs for this area. The programs serve 4 and 5 years olds from low income families in the neighborhood. Head Start is a federally funded half-day morning early childhood education program during the school year. The TOA Childcare program serves the same children in the afternoon.

The Head Start and Childcare programs have been serving PHA residents in its current location on PHA property, 58 Boyd Street, since the early 1990's. It fills a tremendous need and has become an integral part of PHA's effort to promote and assist families to succeed and achieve self-sufficiency. PHA families are the priority for the program's annual recruitment and registration. If slots remain unfilled, other low income families from the neighborhood can take advantage of the program. The large majority of participants are Portland Housing Authority residents.

Head Start eligibility is based on household income. Approximately 90% of enrollees must come from households with incomes at or below the federal poverty line. Currently, 100% of the children in the East Bayside Head Start location are from households with incomes below the federal poverty line. No fees are charged to families with children in the Head Start program.

During the summer, when the Head Start and Childcare programs are inactive, the space is used for a variety of neighborhood services including the Summer Lunch Program operated by the Portland Housing Authority with funding from USDA and the Maine Dept. of Health and Human Service Summer Food Service Program. We anticipate this space will also be used for large community meetings and workshops.

The East Bayside Summer Lunch Program charges no fees pursuant to federal Summer Food Service Program (SFSP) rules that provides free meals that meet Federal nutrition guidelines to all children 18 years old and under in areas with significant concentrations of low-income children.

This application addresses the following Standards relating to Conditional Use:

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*

Response: As indicated above, the Head Start Program has been operating on the East Bayside campus for over 20 years and serves an important segment of the East Bayside neighborhood. The majority of the children enrolled into the program are residents of the Portland Housing properties, and most walk to the current program location. We anticipate the same trend upon relocation to the Bayside Anchor building. Sidewalk improvements including curb bump-outs, new crosswalks, and a designated drop-off area on Boyd Street will provide a safe pedestrian area directly adjacent to the Head Start entrance for staff, students, and visitors.

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.*

Response: The Head Start program is proposed to be located in the southwest corner of the new Bayside Anchor Building with direct access to Boyd Street and a secondary access onto the community terrace area located on the west side of the building. It is anticipated that the children will be taken on supervised trips to the existing playground located across Boyd Street adjacent to the Community Gardens. The current number of students will be maintained at approximately 15-20. We do not anticipate any unsanitary or harmful conditions created as a result of this use.

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.*

Response: The Head Start program currently exists approximately 500 feet west of the proposed Bayside Anchor project. Its relocation to this site provides a stronger sense of community, maintains easy accessibility from the entire East Bayside neighborhood, and integrates with the residential and community functions that will occur in the Bayside Anchor building. The location on the southwest corner of the building provides separation from other residential or community use. A safe, designated outdoor gathering space is proposed on the west side of the building. All storage, solid waste, and other impacts of the program will be integrated into the Bayside Anchor building program, which has interior trash and bicycle storage rooms. A designated drop off area adjacent to the entrance, new crosswalks, and widened sidewalks will provide safe and effective circulation and gathering for students as well as neighborhood residents.

Attached please find supporting plans and documents as required in the Application and a check for \$150.00 covering the Application and Processing fees. We feel strongly that the Application meets the Conditional Use requirements of the R-7 zone for Nursery Schools and look forward to meeting with the Zoning Board of Appeals to discuss the project in greater detail. Please do not hesitate to contact me if you have questions or need additional information.

With Regards,
CARROLL ASSOCIATES

A handwritten signature in dark ink, appearing to read 'P. Carroll', with a long horizontal flourish extending to the right.

Patrick J. Carroll, Principal

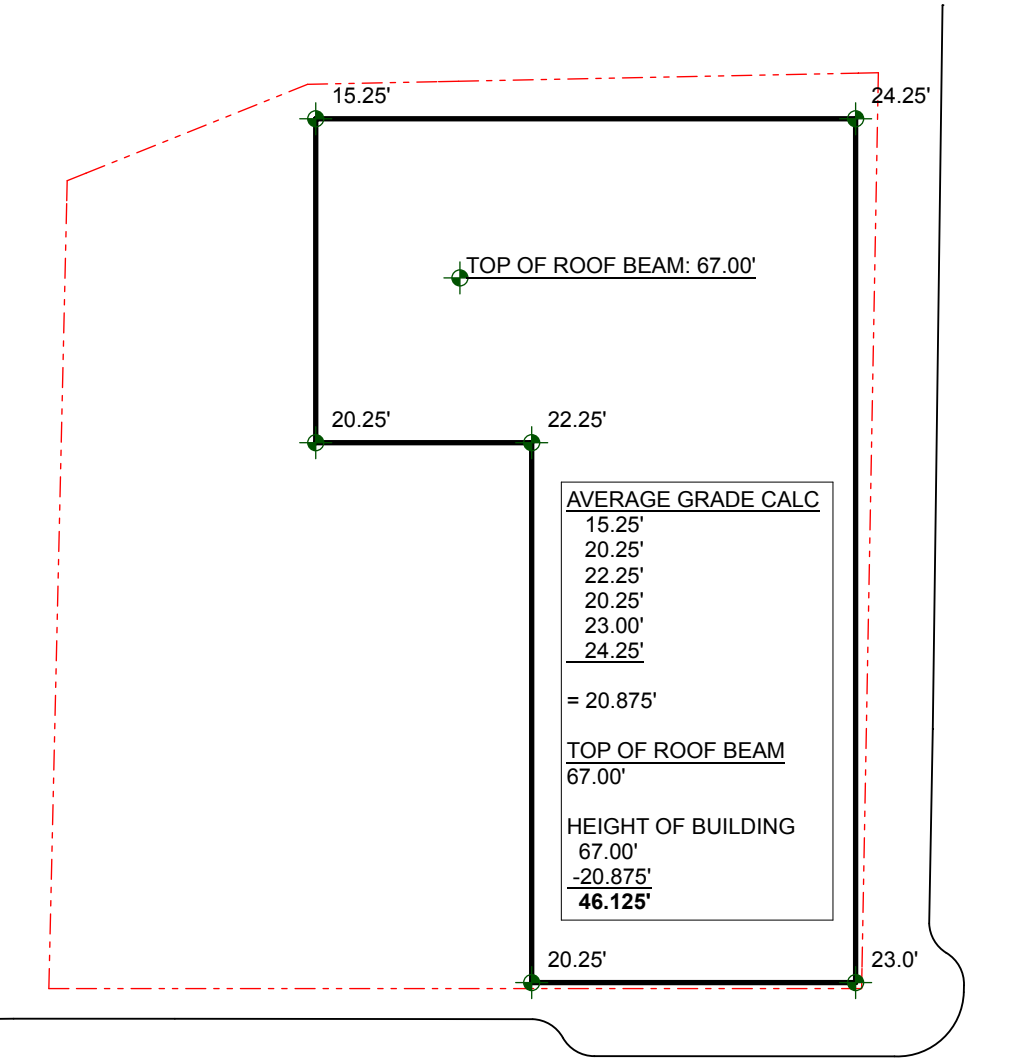
CC: Mark Adelson, PHA
Brooks More, Avesta
Rick Knowland, City of Portland

UNIT MIX: GROUND FLOOR	
Zone Category	Quantity
1 BR	4
EFFICIENCY	2
	6

UNIT MIX: TOTAL	
Zone Category	Quantity
1 BR	34
2 BR	6
EFFICIENCY	5
	45

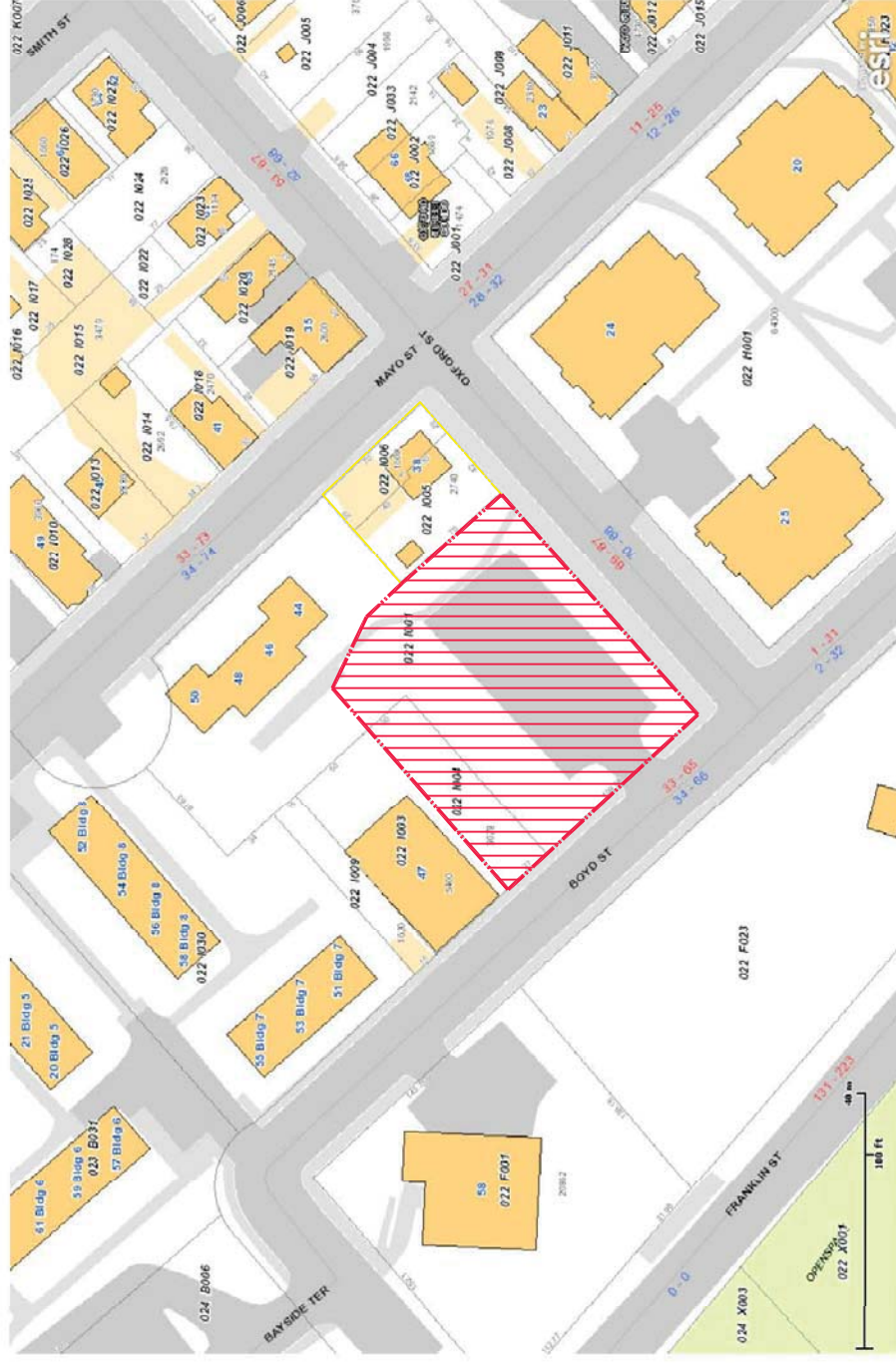
UNIT MIX: TOTAL BUILDING		
Floor (Story)	Zone Category	Quantity
1st FLOOR	1 BR	4
1st FLOOR	EFFICIENCY	2
2nd FLOOR	1 BR	10
2nd FLOOR	2 BR	2
2nd FLOOR	EFFICIENCY	1
3rd FLOOR	1 BR	10
3rd FLOOR	2 BR	2
3rd FLOOR	EFFICIENCY	1
4th FLOOR	1 BR	10
4th FLOOR	2 BR	2
4th FLOOR	EFFICIENCY	1
		45

GROUND FLOOR PROGRAM			
ID	Zone Name	Area	Zone Category
100	GROSS AREA	9,592	GROSS AREA
101	LOBBY	778	CIRCULATION
102	COMMUNITY ROOM	413	COMMUNITY SERVICE FACILITY
103	OFFICE	69	COMMUNITY SERVICE FACILITY
104	LAUNDRY	205	UTILITY
105	TRASH	245	UTILITY
107	MAINT.	49	UTILITY
107	MECH	96	UTILITY
108	BIKE STOR.	283	UTILITY
109	ADA	58	UTILITY
109	ADA	58	UTILITY
111	EFFICIENCY	432	EFFICIENCY
111	EFFICIENCY ADA	432	EFFICIENCY
112	1 BR APT	540	1 BR
112	1 BR APT	576	1 BR
112	1 BR APT	576	1 BR
112	1 BR APT	576	1 BR
121	HEAD START	1,244	COMMUNITY SERVICE FACILITY
122	PHA NEIGHBORHOOD SERVICE HUB	1,242	COMMUNITY SERVICE FACILITY
123	COMMUNITY POLICE	260	COMMUNITY SERVICE FACILITY



CONDITIONAL USE PERMIT

My Map



BAYSIDE ANCHOR APARTMENTS TAX MAP LOCATION EXHIBIT



View of site from north east corner of property



View of site from the south at the intersection of Boyd and Oxford Streets

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT dated this 16th day of July, 2013, is by and among PORTLAND HOUSING AUTHORITY, a Maine nonprofit corporation having a mailing address of 14 Baxter Boulevard, Portland, ME 04101 (the "Seller"), and PORTLAND HOUSING DEVELOPMENT CORPORATION, a Maine nonprofit corporation having a mailing address of 14 Baxter Boulevard, Portland, ME 04101 or its assigns ("Buyer").

RECITALS

WHEREAS, Seller is the owner of a certain parcel of land, and all improvements, buildings and fixtures presently on the real estate, at the corner of Boyd and Oxford Streets in the City of Portland, Maine and being a portion of its Bayside East Public Housing Project ME 003005, shown as the cross hatched parcel on the Boundary Survey and Lot Division attached hereto as Exhibit A (the "Premises"); and

WHEREAS, Seller wishes to grant to Buyer, and Buyer wishes to accept, an option to purchase (the "Option") with respect to the Premises upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Option Period; Extension; Exercise of Option. Seller hereby grants Buyer the option to purchase the Premises for a period extending through July 31, 2015 (the "Option Period").

- a. The Option and the obligation of each of the Seller and Buyer shall be conditional upon (i) approval by the United States Department of Housing and Urban Development ("HUD") of a demolition disposition by Portland Housing Authority in order to remove the Premises from the Declaration of Trust currently encumbering the real estate and authority to transfer the Premises to Buyer or its assigns, for the development of multi-family housing thereon; (ii) receipt of all required municipal and state approvals for the development of a mixed-income family housing project of approximately 42 units to be located on the Premises; and (iii) and an award of Low Income Housing Tax Credits for such development.
- b. Buyer may exercise the Option at any time during the Option Period by giving written notice to Seller of its intent to exercise the Option (the "Purchase Notice"). Notice delivered to Seller or sent to Seller by certified mail, return receipt requested, at the above address shall be sufficient.

2. Purchase Price. Subject to adjustment as set forth below, Buyer shall pay Seller a purchase price of Two Hundred Ninety Three Thousand Nine Hundred Fifty Dollars (\$293,950.00) (the "Purchase Price").

3. Closing. If Buyer exercises the Option, closing shall take place at a date and time and at a location agreed upon by the Buyer and the Seller, within ninety (90) days after the date of the Purchase Notice.

4. Conditions to Sale. If Buyer exercises the Option, the following terms and provisions shall apply:

- a. Title to the Premises shall be conveyed to Buyer by good and sufficient Warranty Deed, which deed shall convey good and clear record and marketable title to the Premises, free from encumbrances except provisions of existing building and zoning laws and any covenants and/or easements of record provided same do not interfere with Buyer's intended use of the Premises; such real estate taxes for the then current tax period which are not due and payable on the date of delivery of such deed; utility and access easements in common with Seller's adjoining developments, and any matters of record which in Buyer's opinion do not interfere with Buyer's plans to develop the property. Buyer shall notify Seller of any defects in title that would make Seller unable to give title to the Premises as herein stipulated. Seller shall be obligated to proceed in good faith to cure any such title defect(s). If required, the closing shall be extended to allow Seller time to cure any such title defects, but in no event shall the closing be extended more than thirty (30) days for such purposes. If a title defect exists, Buyer may elect, by written notice to Seller, either (i) to accept title to the Premises subject to any uncured defects in title or (ii) to terminate the Option, whereupon any extension fee(s) paid by Buyer to Seller shall be immediately refunded to Buyer, the obligations of all parties hereunder shall cease, and neither party shall have any claim against the other by reason of this Agreement.
- b. Each party shall pay one-half of the Maine state transfer tax.

5. Representations. Seller represents, covenants and warrants to and agrees with Buyer as follows:

- a. Seller is the current owner of the Premises, and; subject to approval by HUD, has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of the obligations hereunder will not conflict with, or result in breach of any regulation, order, judgment, injunction or decree of any court or governmental authority or any agreement or instrument to which Seller is a party or by which Seller is bound.
- b. There are no agreements or contracts affecting the Premises or any use of the Premises that would not be terminable at will by Buyer without penalty from and after the Closing, other than those for which Seller will be seeking

approval from HUD in connection with its demolition disposition application.

Buyer represents, covenants and warrants to Seller that Buyer has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder: (i) have been duly authorized by all requisite action; and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of the by-laws or articles of organization of Buyer or any law or any regulation, order, judgment, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Buyer is a party or by which it is bound.

6. Notice. Whenever notice is given or required to be given by either of the parties hereto to the other, it shall be deemed to have been given if in writing and mailed by certified or registered mail, return receipt requested, postage prepaid, or hand delivered, addressed to the parties at the address set forth in the first paragraph above or to such other address(es) as either party shall have last designated by like notice in writing. All notices shall be effective upon hand delivery or mailing, whichever first occurs.

7. Further Assurances. The parties agree that up to and after the date of closing, they shall do such things and execute, acknowledge and deliver any and all additional instruments, documents and materials as either party may reasonably request to fully effectuate the purposes of this Agreement.

8. Buyer's Access. Buyer and others whom Buyer may designate shall have the right, at all reasonable times, at Buyer's sole cost and expense, risk and hazard, to enter upon the Premises to examine and/or show the same and make, or cause to be made, engineering studies with respect thereto, including, without limitation, surveying, conducting test borings in order to determine sub-soil conditions, and in general conducting all other tests, analysis and studies of the Premises which Buyer deems prudent in connection with Buyer's intended development or use of the Premises. Buyer shall restore the Premises following any testing as reasonably as possible to its pre-existing condition, unless otherwise agreed by Seller.

9. Construction of Agreement. This instrument, executed in duplicate, is to be construed as a Maine contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Seller and Buyer. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. Time is of the essence with respect to all dates set forth in this Agreement.

10. Risk of Loss. The risk of loss shall remain on Seller at all times until closing.

11. Assignment. Buyer may assign this Agreement to any party affiliated with Buyer on in which Buyer or an affiliate of Buyer has an interest.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

PORTLAND HOUSING AUTHORITY

By: Mark Adelson
Mark Adelson
Its Executive Director

BUYER:

PORTLAND HOUSING DEVELOPMENT
CORPORATION

By: Mark Adelson
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

July 16, 2013

Personally appeared the above-named, Mark Adelson, Executive Director of Portland Housing Authority and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Portland Housing Authority.

Before me,

Sharon E.B. Buffinton
Notary Public/Attorney at Law

SHARON E.B. BUFFINTON
NOTARY PUBLIC OF MAINE
My Commission Expires February 28, 2019
Printed Name



Exh. 5, 7 D

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
Conditional Use Appeal Application

Applicant Information:

NAME

Gina Kostopoulos

BUSINESS NAME

North Deering Children's Academy

BUSINESS ADDRESS

207-838-9300 NDCAPortland@gmail.com

BUSINESS TELEPHONE & E-MAIL

Business Owner/ Building Lessee

APPLICANT'S RIGHT/TITLE/INTEREST

Professional/ Residential

CURRENT ZONING DESIGNATION

Subject Property Information:

970 Forest Avenue

PROPERTY ADDRESS

143-B-1

CHART/BLOCK/LOT (CBL)

Stephen E. Mardigan

PROPERTY OWNER (If Different)

460 Baxter Blvd, Portland, Maine 04103

ADDRESS (If Different)

207-772-5555 jay@wrebrokers.com

PHONE # AND E-MAIL

CONDITIONAL USE AUTHORIZED BY
SECTION 14- 147.5(e)

EXISTING USE OF THE PROPERTY: Vacant building. Former office use and former day care

TYPE OF CONDITIONAL USE PROPOSED: Daycare Center in a Professional/Residential Zone

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.

SIGNATURE OF APPLICANT

January 1, 2016

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

Cover Letter
Conditional Use Permit

City of Portland
Planning and Urban Development Department

North Deering Children's Academy
Gina Kostopoulos
5 Bramblewood Drive
Portland, Maine 04103
(207) 838-9300

Zoning Board of Appeals,

I am applying for a conditional use permit under section 14-147.5(e.) of the City of Portland code of ordinances. This application serves the purpose of North Deering Children's Academy, ME license number 655065, currently located at 5 Bramblewood Drive, Portland, ME to relocate to 970 Forest Avenue, Portland, ME and expand from a licensed family home child care to a licensed child care center. The proposed location has served as a daycare center in the past. (Pleasant Day Nursery School) serving the same ages as I intend and is set up in an order that is suitable to the needs of a childcare facility.

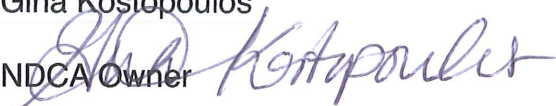
I am currently licensed for 12 children and I am at max capacity everyday. I have 56 families on my waiting list at my current location 2 miles (6 mins) away from the proposed location of expansion. I would never have the opportunity to serve these families needs at my current location. At a time where childcare is in serious demand in this area, I intend to increase enrollment and provide a safe atmosphere for children ages 6 weeks to 5 years to learn, grow and explore. This expansion will create twelve full time and four part time employment opportunities and 80 full time child care openings.

This location has plenty of indoor and outdoor play space. The designated play space has a pre existing 6 foot fence and is located to the rear of the building. Outdoor play will be monitored by appropriate staff members to accommodate child to teacher ratios with concern being safety and noise level for neighboring properties.

The building has six bathrooms and plumbing for a sink in each room for sanitary purposes. The lot size generously exceeds the required 6,000 square feet and has plenty of off street parking. We will not be adding exterior alterations to the building. There will be minimal impact of traffic flow in the area. The most vehicle traffic will be generated during the hours of drop off (7:00a-9:00a) and pick up 4:00p-6:00p). Our hours of operation will be 7:00a-6:00p. Signage will follow guidelines, and be attached to the pre-existing sign post, and I will obtain all necessary permits to do so.

Thank You for your time and consideration of my conditions use proposal.

Gina Kostopoulos

NDCA Owner 

CONDITIONAL USE STANDARDS:

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.

CODE OF ORDINANCE STANDARDS:

1.) Proof of licensing with the state of Maine DHHS submitted to city prior to issuance of certificate of occupancy.

2.) The facility shall provide a minimum of seventy-five square feet of outdoor play area per child.

1.) There will be minimum impact on the traffic flow in this high traffic area. The most vehicle traffic will be generated during the hours of drop off (7:00am-9:00am) and pick up (4:00pm-5:30pm). Hours of operation 7:00am-5:30pm. No expanse of pavement needed. We will not need more parking than what is already established for this building.

2.) We will not be creating unsanitary or harmful conditions. Outdoor noise volume will be monitored by teachers but certainly won't be harmful. Glare, dust, sewage disposal, emissions to the air, odor, lighting or litter will not be unsanitary or harmful.

3.) Design and operation will be similar if not the same as when this property was previously pleasant day nursery school. We will apply for a permit to hang appropriate signage on the pre existing sign post. We will have disposal removal and unscheduled package deliveries, the current structure will remain. Material storage will be inside the building or inside the fenced play yard appropriately. There will be no impact on surrounding properties.

1.) My current license is non transferable, but I am currently working with the state to license the space and a license will be obtained and submitted before I am issued a certificate of occupancy.

2.) The designated outdoor fenced play space is currently 5967 sf of grass. We plan to extend the play area 25 feet into the unoccupied paved area before the parking spaces begin for additional alcove play area. The additional play space would put us well over the 6,000 sf of outdoor play space allowing 80 children at least 75 sf of outdoor play space.

3.) The play area shall be located in the side and rear yards only and shall not be located in the front yards

4.) Outside play areas shall be separated from abutting properties by a fence at least forty-eight inches in height

5.) A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the city's technical standards and guidelines.

6.) The minimum lot size for a daycare facility, home babysitting service, nursery school or kindergarten serving more than twelve children shall be six thousand square feet.

7.) Off-street parking: off-street parking is required.

8.) Any additions or exterior alterations shall be designed to be compatible with the architectural style of the building.

3.) The fenced play space is to the rear and side of the building per plot plan. There will be no play space in the front of the building.

4.) The outdoor play space is surrounded by a fence seventy-two inches in height.

5.) There is no current landscape buffer between the play yard and abutting properties. This is something we plan to do prior to opening.

6.) The lot size generously exceeds the required six-thousand square feet, as the play yard alone is six-thousand square feet.

7.) On-site, Off-street parking is provided for approximately twenty-five cars which would provide enough parking spaces for all twelve employees and thirteen extra spaces for parents dropping off and picking up.

8.) There are two things we need to do outside and neither are direct additions to the building. We need to put a privacy fence in place to secure the outside play space and we need to put a vegetation buffer in. Both will be approved projects and be compatible with the style of the building.

970 Forest Ave

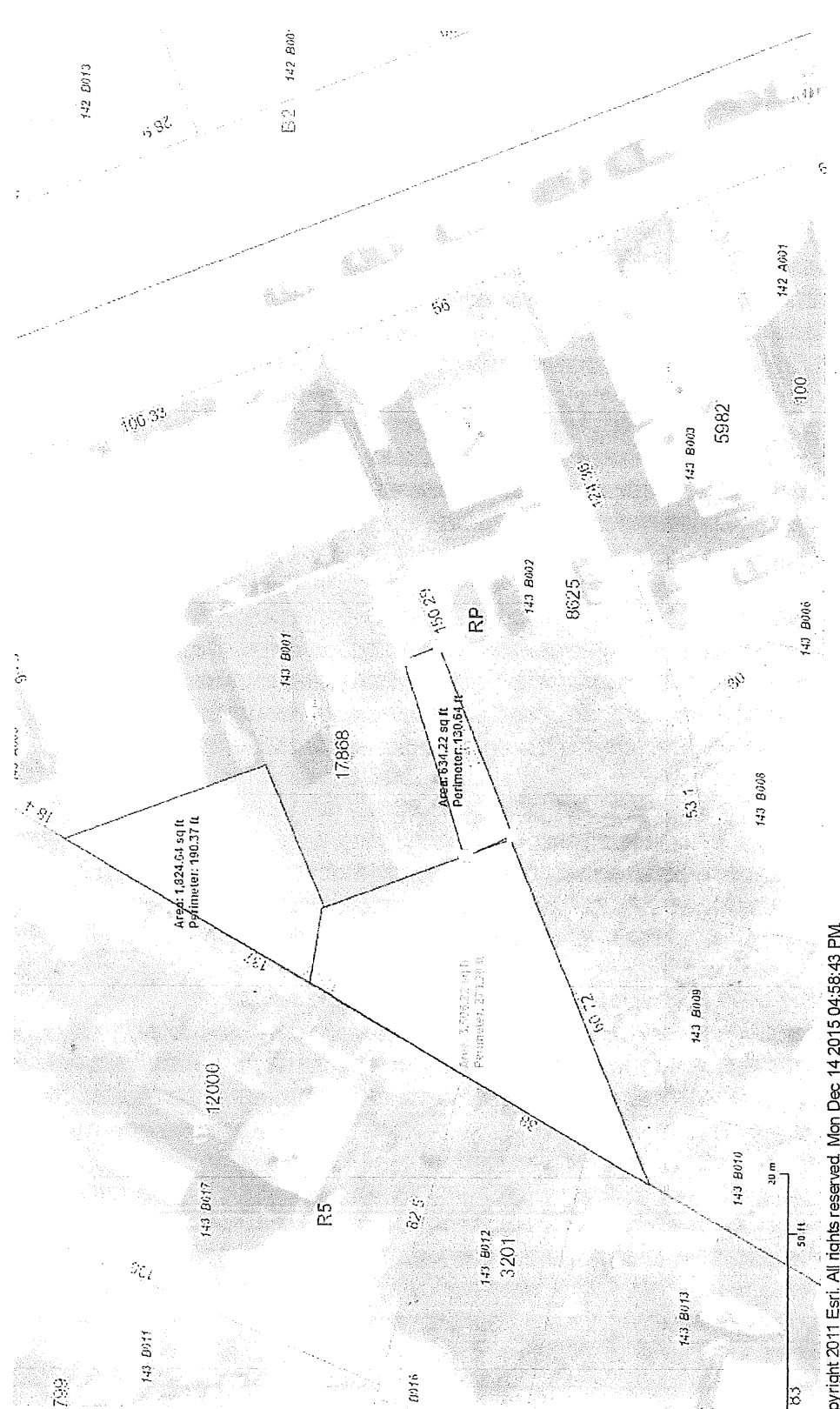


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970 Forest Ave

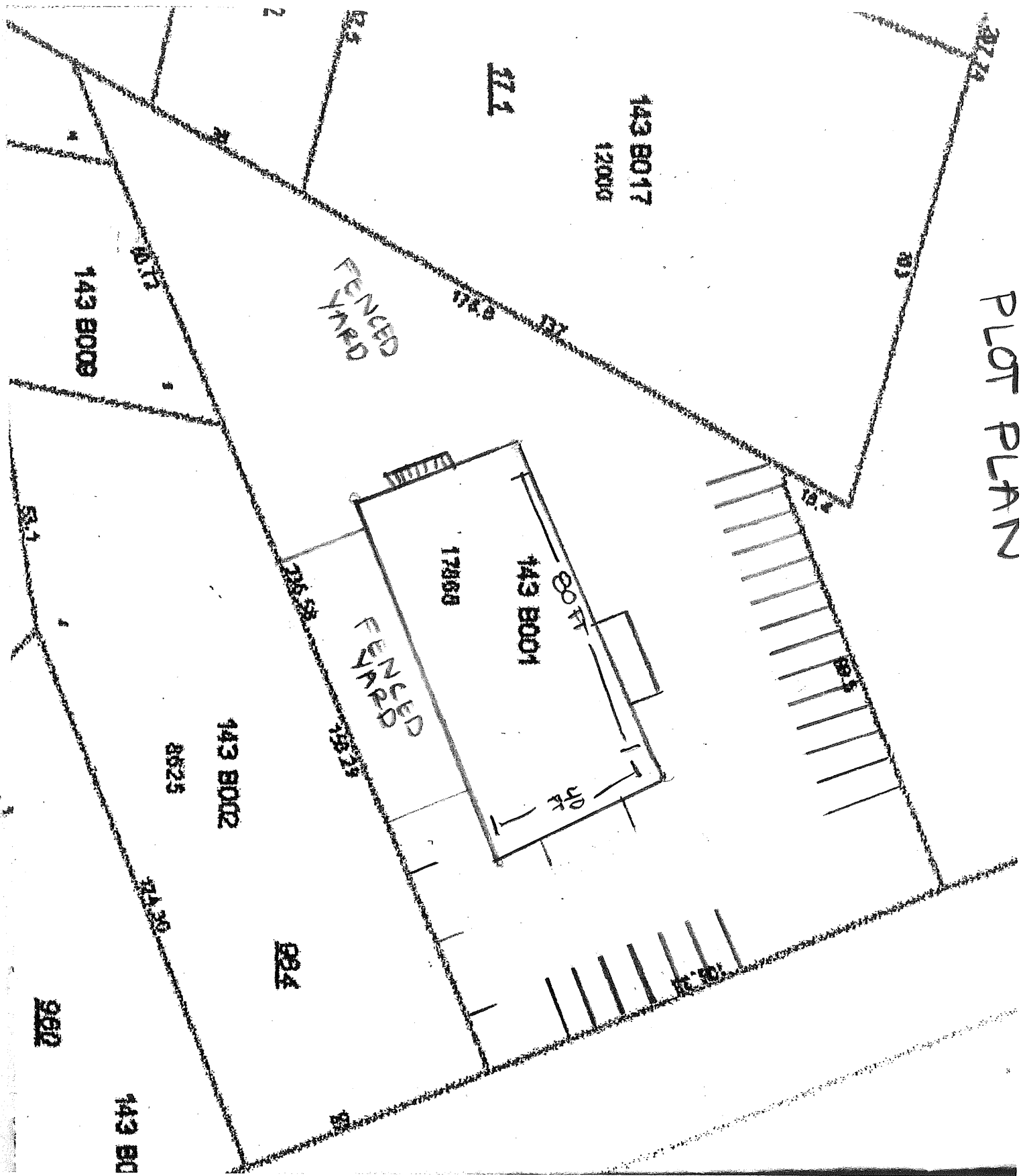


PLOT PLAN



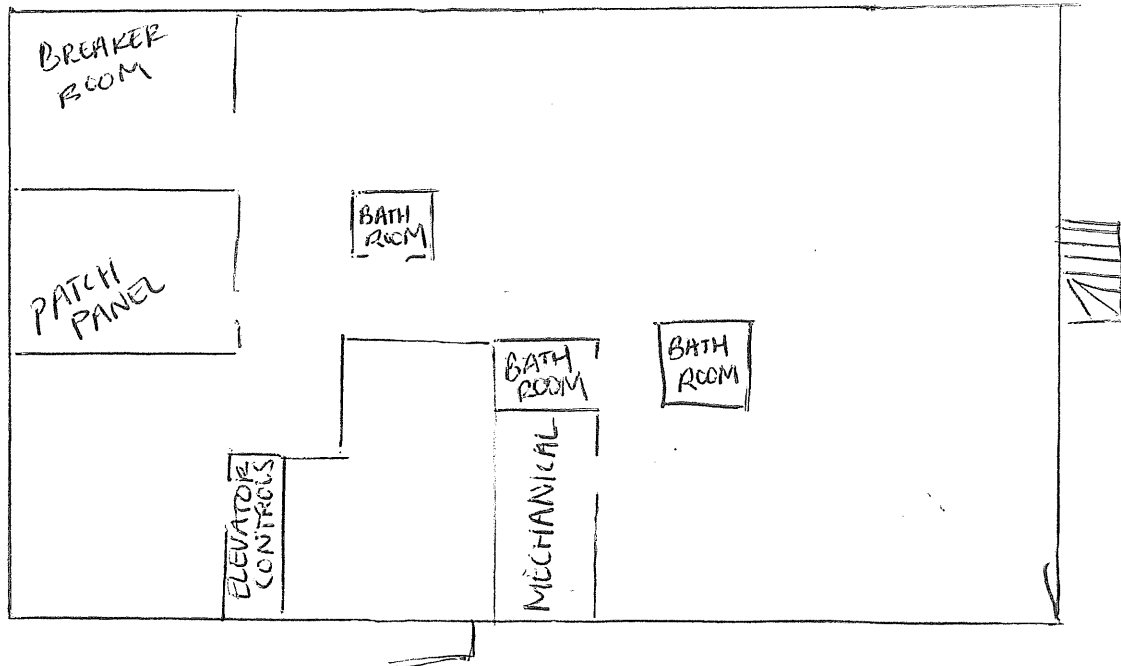
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PLOT PLAN

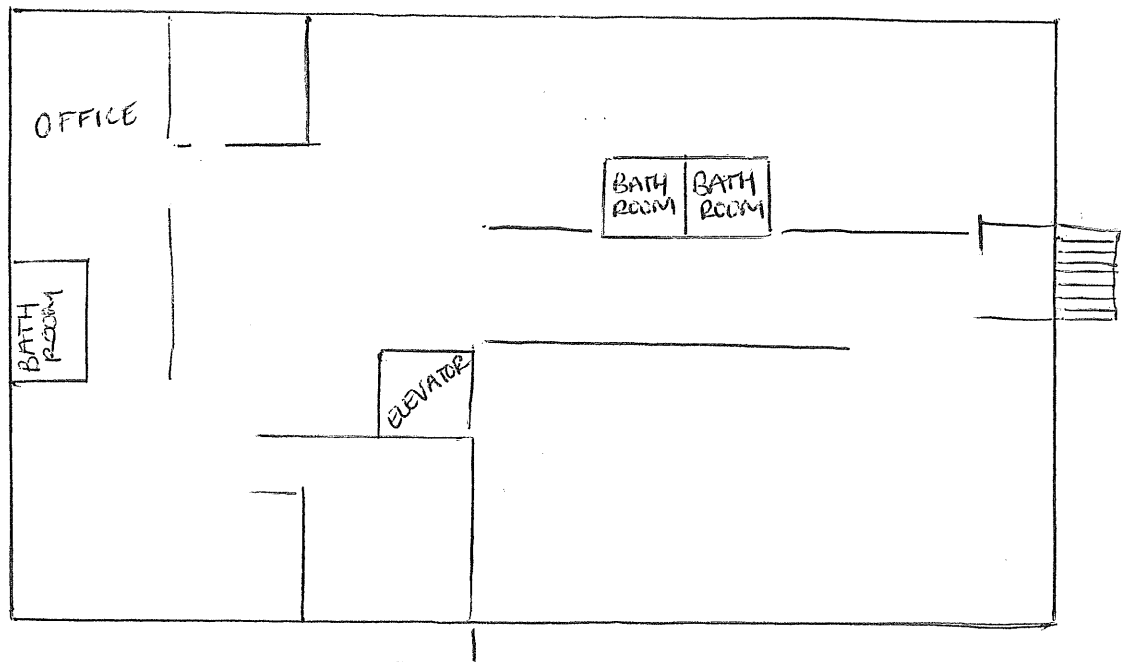


CURRENT FLOOR PLAN

FIRST FLOOR

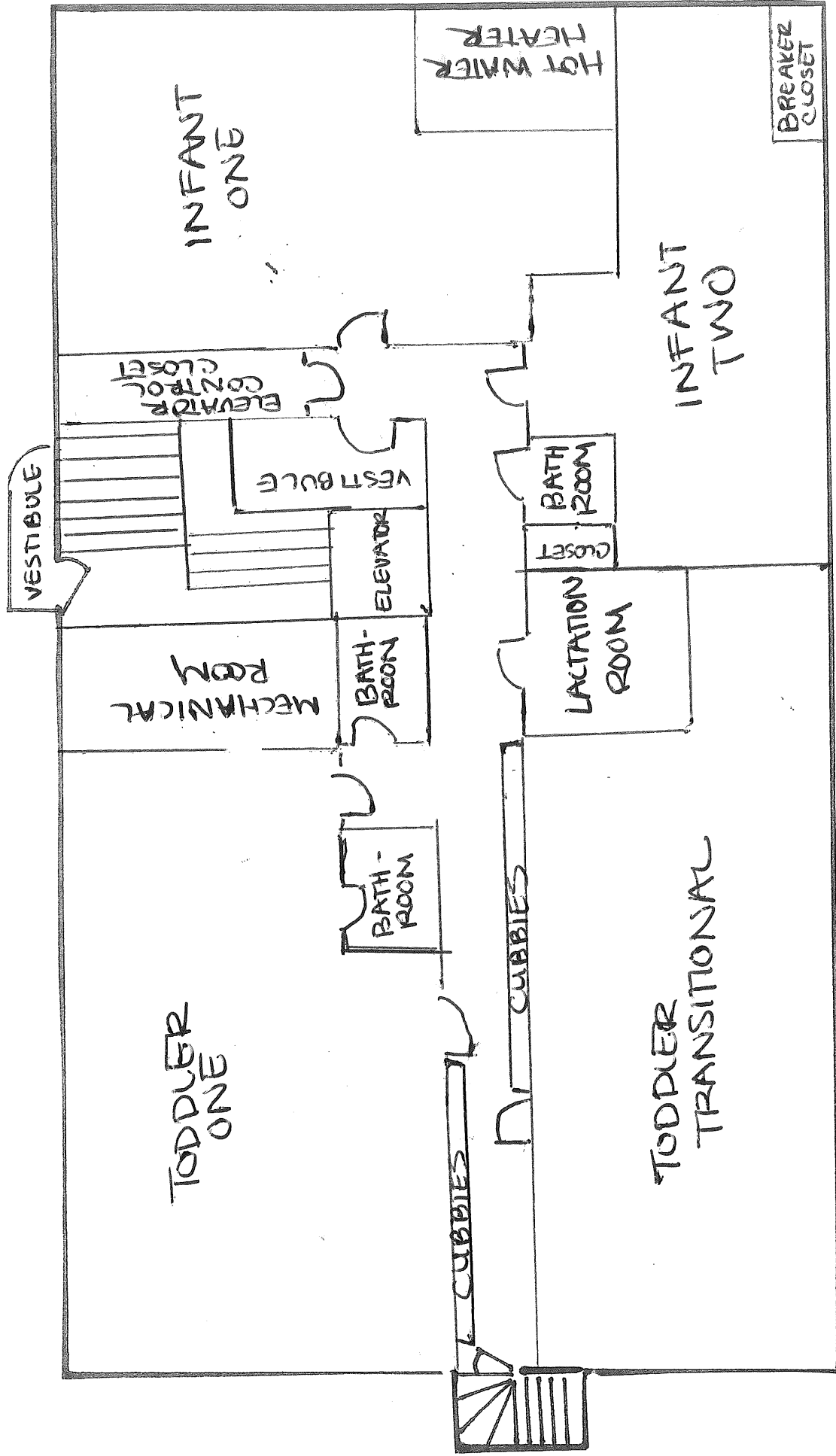


SECOND FLOOR

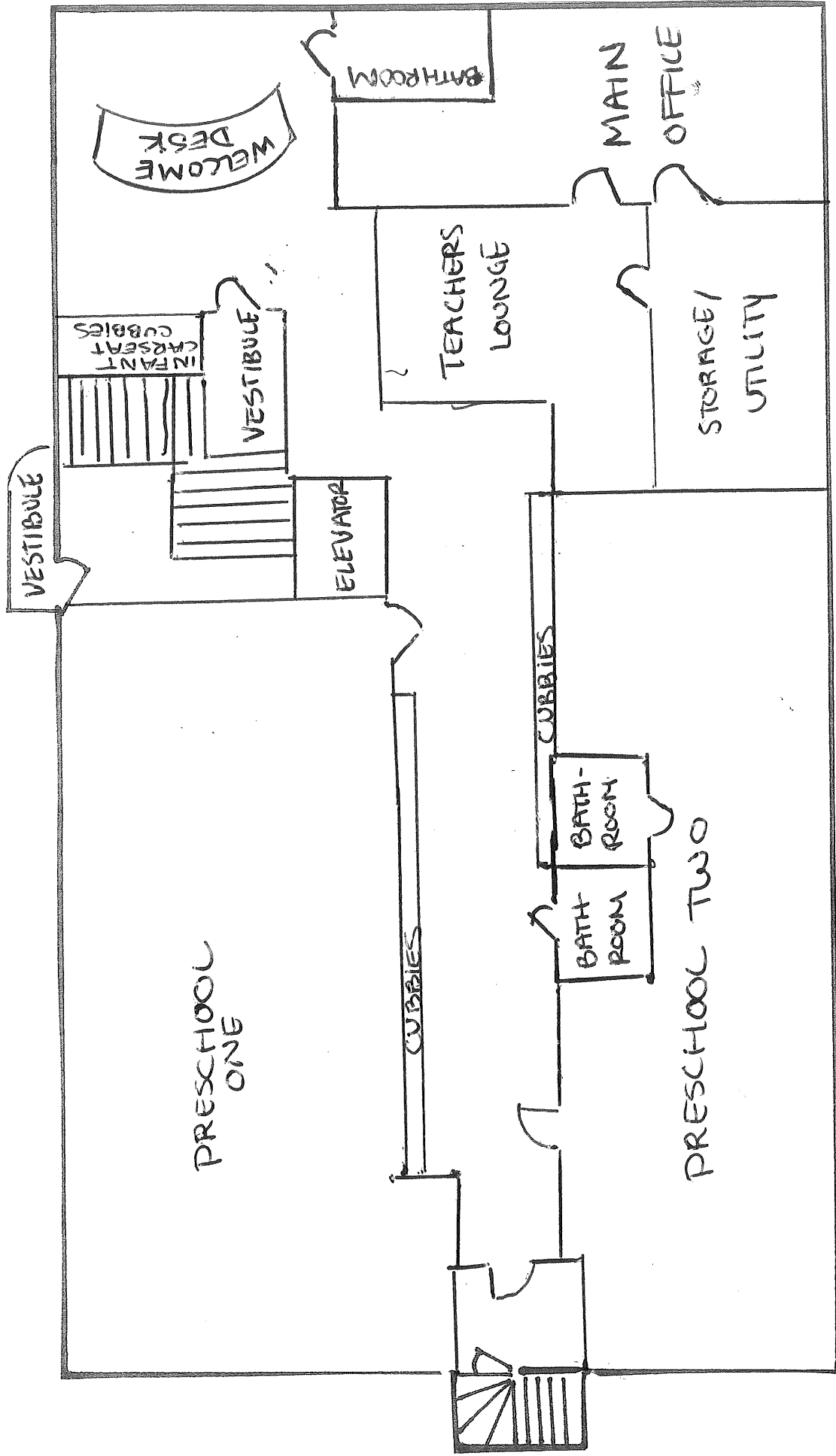


FIRST FLOOR

PROPOSED



SECOND FLOOR PROPOSED



**C 970
FOREST
AVENUE**

Previous Bear Plans

The floor plan of the second floor shows a central corridor (Vestibule) running horizontally. To the left of the corridor are the Counseling Room, Storage, Patch Panel, Office, and another Vestibule. To the right of the corridor are the Kitchen, Files, Exam Room 1, Exam Room 3, Exam Room 4, Lab, Port and Hub, Recovery Room, and Exam Room. The plan also shows the location of the NCCD007 and NCCD008 rooms. The rooms are labeled with their names and extension numbers (Ext. 301, Ext. 302, Ext. 303, Ext. 304, Ext. 305, Ext. 306, Ext. 307, Ext. 308, Ext. 309, Ext. 310, Ext. 311, Ext. 312, Ext. 313, Ext. 314, Ext. 315, Ext. 316, Ext. 317, Ext. 318, Ext. 319, Ext. 320, Ext. 321, Ext. 322, Ext. 323, Ext. 324, Ext. 325, Ext. 326, Ext. 327, Ext. 328, Ext. 329, Ext. 330, Ext. 331, Ext. 332, Ext. 333, Ext. 334, Ext. 335, Ext. 336, Ext. 337, Ext. 338, Ext. 339, Ext. 340, Ext. 341, Ext. 342, Ext. 343, Ext. 344, Ext. 345, Ext. 346, Ext. 347, Ext. 348, Ext. 349, Ext. 350, Ext. 351, Ext. 352, Ext. 353, Ext. 354, Ext. 355, Ext. 356, Ext. 357, Ext. 358, Ext. 359, Ext. 360, Ext. 361, Ext. 362, Ext. 363, Ext. 364, Ext. 365, Ext. 366, Ext. 367, Ext. 368, Ext. 369, Ext. 370, Ext. 371, Ext. 372, Ext. 373, Ext. 374, Ext. 375, Ext. 376, Ext. 377, Ext. 378, Ext. 379, Ext. 380, Ext. 381, Ext. 382, Ext. 383, Ext. 384, Ext. 385, Ext. 386, Ext. 387, Ext. 388, Ext. 389, Ext. 390, Ext. 391, Ext. 392, Ext. 393, Ext. 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The floor plan of the second floor shows the following layout:

- Top Left:** Medical Records, Bath Room, Waiting Room.
- Top Center:** Office, Lab, Exam Room 6, Exam Room 5.
- Top Right:** Exam Room 4, Exam Room 3, Exam Room 2, Exam Room 1.
- Center:** Vestibule, Placs., Exam Room 2, Exam Room 3, Exam Room 4.
- Bottom:** Vestibule, Exam Room 2, Exam Room 3, Exam Room 4.

Key features and labels include:

- Medical Records:** Located in the top left corner.
- Bath Room:** Located in the top left corner, adjacent to the Medical Records.
- Waiting Room:** Located in the top left corner, adjacent to the Bath Room.
- Office:** Located in the top center.
- Lab:** Located in the top center, adjacent to the Office.
- Exam Room 6:** Located in the top right corner.
- Exam Room 5:** Located in the top right corner, adjacent to Exam Room 6.
- Exam Room 4:** Located in the top right corner, adjacent to Exam Room 5.
- Exam Room 3:** Located in the top right corner, adjacent to Exam Room 4.
- Exam Room 2:** Located in the top right corner, adjacent to Exam Room 3.
- Exam Room 1:** Located in the top right corner, adjacent to Exam Room 2.
- Vestibule:** Located in the center of the floor plan.
- Placs.:** Located in the center of the floor plan, adjacent to the Vestibule.
- Exam Room 2:** Located in the center of the floor plan, adjacent to the Vestibule.
- Exam Room 3:** Located in the center of the floor plan, adjacent to Exam Room 2.
- Exam Room 4:** Located in the center of the floor plan, adjacent to Exam Room 3.
- Vestibule:** Located in the bottom center of the floor plan.
- Exam Room 2:** Located in the bottom center of the floor plan, adjacent to the Vestibule.
- Exam Room 3:** Located in the bottom center of the floor plan, adjacent to Exam Room 2.
- Exam Room 4:** Located in the bottom center of the floor plan, adjacent to Exam Room 3.



FOR
SALE

970 FOREST AVENUE

PORTLAND, MAINE

Building Size: 6,400+/- sf

Land Area: 0.41+/- acres

Year Built: 1988

Assessor's Reference: Map 143, Lot B1

Book/Page: 10794-321

Assessed Value: Land: \$181,100
Bldg: \$430,900
Total: \$612,000

Elevator: Yes

Signage: Roadside pylon sign

Zoning: RP - Residential Professional

Parking: On-site parking for approximately 25 cars

Construction: Wood-framed

HVAC: Forced Hot Air, natural gas with central air conditioning

Roof: Gabled

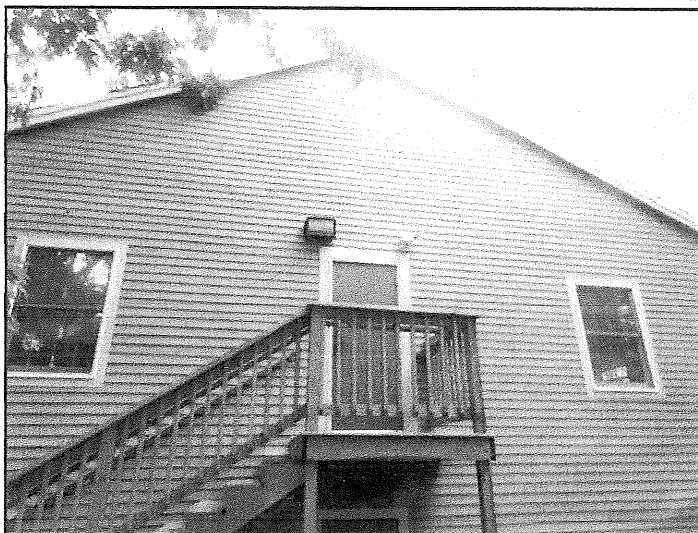
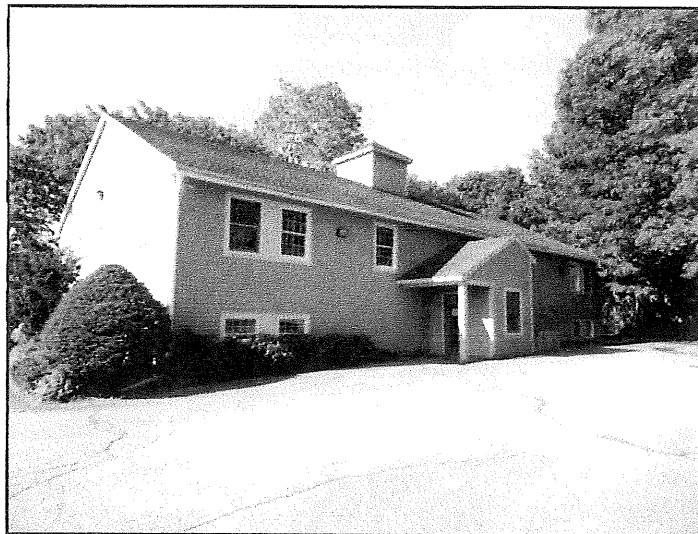
Flooring: Combination of carpet and tile

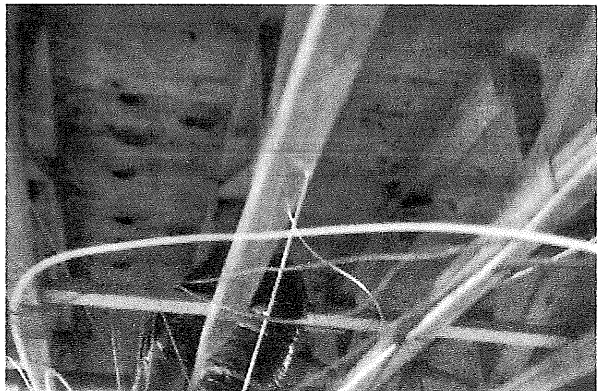
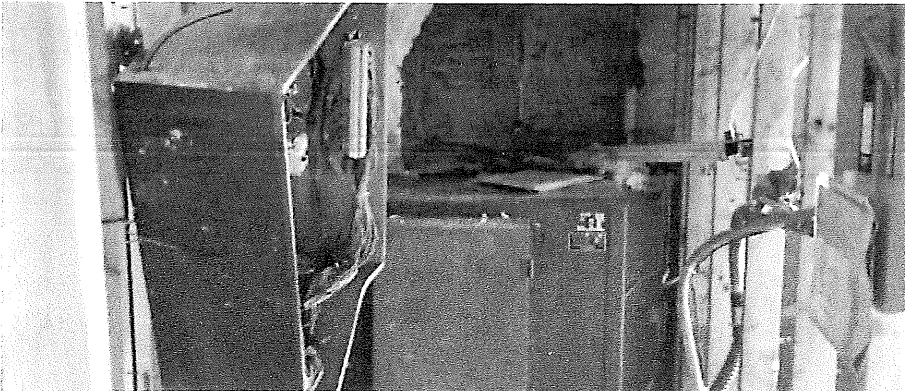
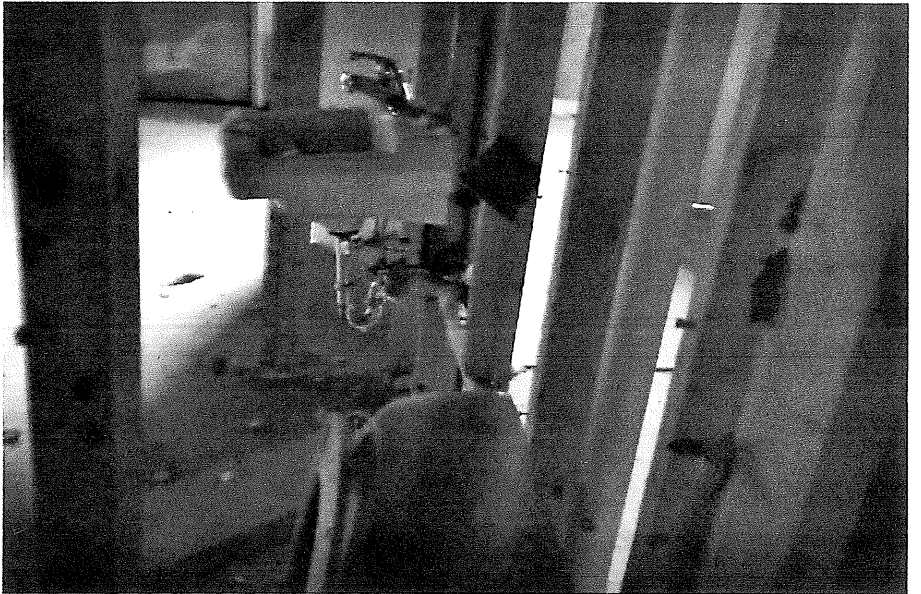
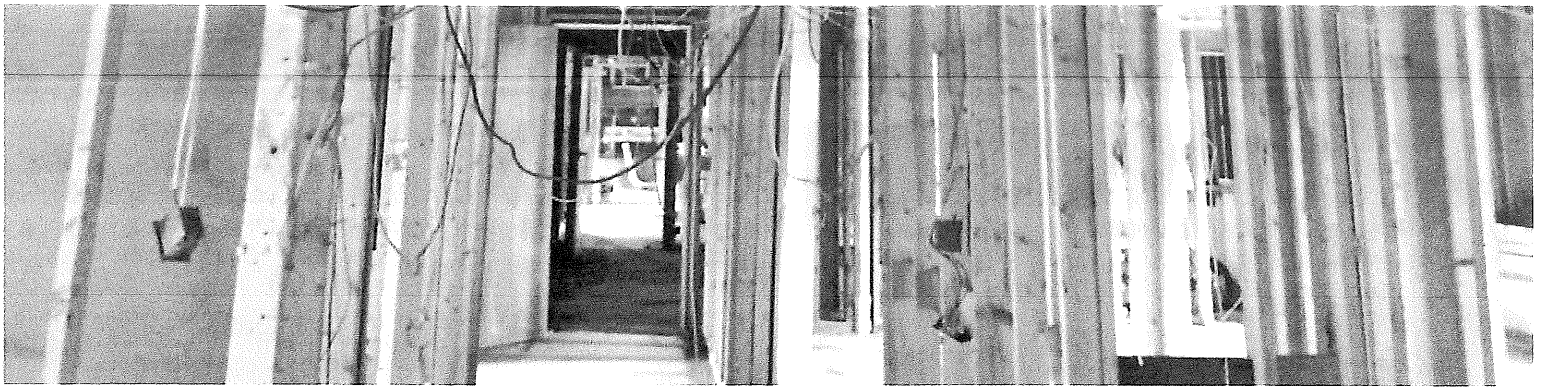
Lighting: Fluorescent

Sprinkler: Full wet system

Water/sewer: Municipal

Sale Price: \$295,000



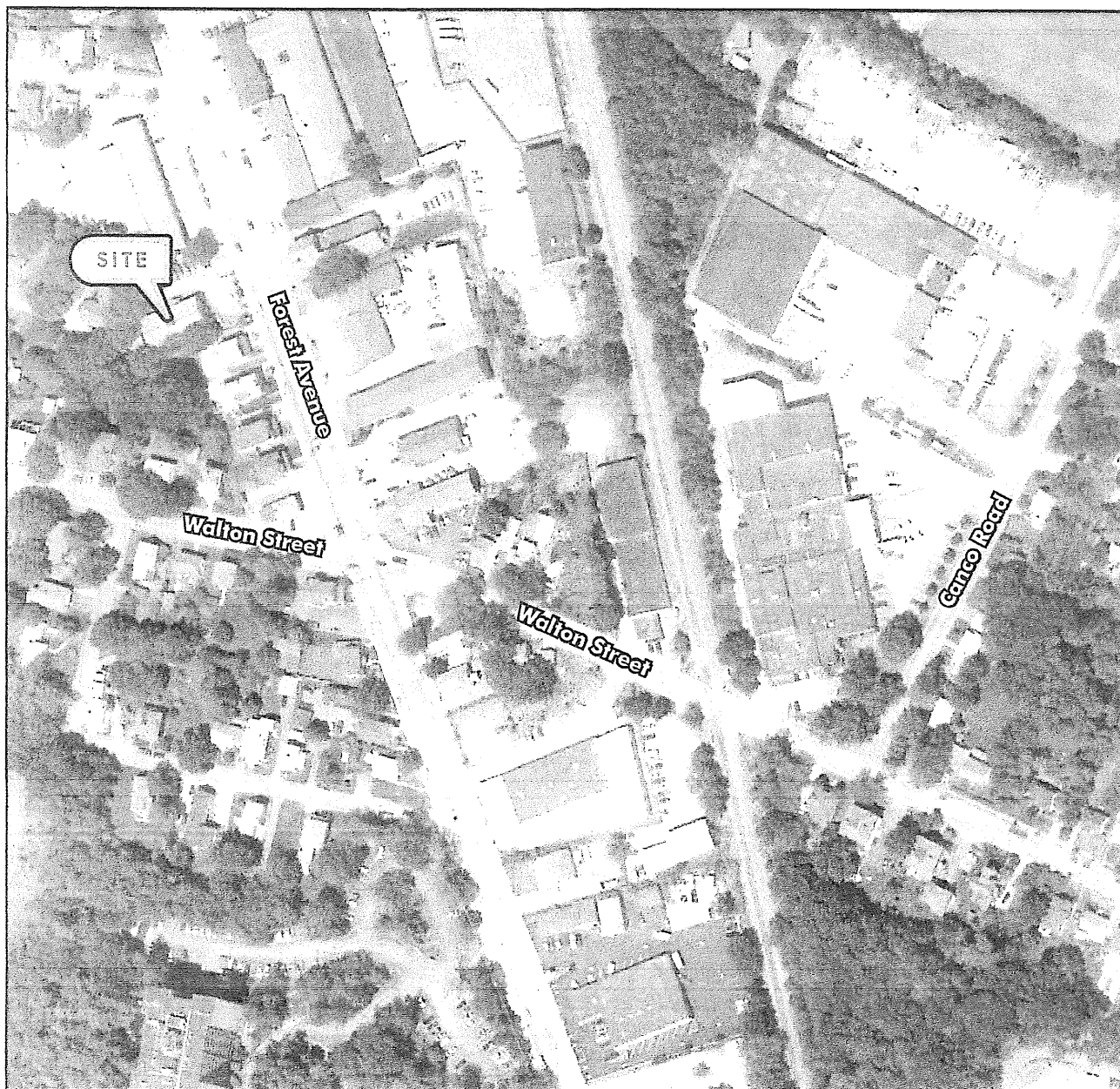


FOR
SALE

970 FOREST AVENUE

PORTLAND, MAINE

Aerial Photograph

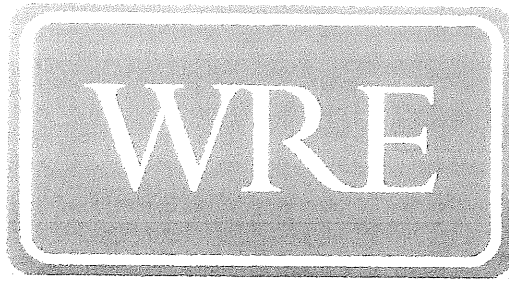


FOR MORE INFORMATION CONTACT:

Joseph Porta
jporta@boulos.com

CBRE | The Boulos Company | One Canal Plaza | Suite 500 | Portland, ME 04101 | 207.772.1333 | www.boulos.com

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December 8, 2015

Gina Kostopoulos
North Deering Children's Academy
5 Bramblewood Drive
Portland, Maine 04103

Re: 970 Forest Ave
Portland, Maine 04103

Gina,

On behalf of Stephen E. Mardigan (hereinafter Landlord), I have outlined the parameters of a deal they are prepared to enter into lease negotiations with North Deering Children's Academy (hereinafter Tenant) at the above captioned address.

1. Location: Approximately 6,400 sf located at 970 Forest Ave, Portland, Maine 04103.
2. Use: During the term of this lease, the premises shall be used as a typical day care facility.
3. Term: This lease shall commence upon execution and terminate five (5) years after rent commencement. Rent and additional rent to commence the earlier of 60 days after the Landlord delivers the space to Tenant or the day Tenant opens for business to the public.

Renewal Option:

This lease is subject to the following renewal options:
One (1) five-year renewal with an annual increase of 3% per year.

4. Base Rent: The base rent for the base term shall be as follows:
Years 1-3—\$10.69 psf payable in monthly installments of \$5,700.00. Rent includes taxes and the landlord's insurance on the property.
Year 4 & 5—3% annual increases per year.

795 Roosevelt Trail Ste 200, Windham, Maine 04062
207-775-3499/207-894-5391 (fax)

5. Utilities / Additional Rent:

The Tenant shall be billed directly for all separately metered utilities (check if applicable), including but not limited to:

- | | |
|------------------|-----|
| a) Electricity | yes |
| b) Fuel (Gas) | yes |
| c) Water / Sewer | yes |

NOTE: This is a modified gross lease. The Tenant will be responsible for the common area maintenance. Tenant will be responsible for any increase in taxes over the base year and any increase in insurance due to Tenant's use.

6. Insurance: The Landlord will maintain: Liability and Fire for the building and parking lot; the Tenant: Liability, Fire and Casualty for the interior premises, its customers, agents and vendors.

7. Tenant's Alterations:

Tenant is allowed to make any non-structural improvements and/or changes, as allowed by code, with the landlord's consent.

8. Landlord's Work:

Landlord will deliver the space as outlined in the attached Specifications.

9. Signage:

Tenant will be able to install its standard signage, as per code, on the front of the building façade and on the shopping center pylon.

Sincerely,

Jay Wise

Jay Wise

Accepted by Tenant

By: *[Signature]*

Date: 12/18/2015

Accepted by Landlord

By: *[Signature]*

Date: 12-8-15

Landlord's Work

- Demise the space per tenant and landlord approved plan
- Insulate the walls and ceiling and sheetrock the perimeter walls
- Wiring to code
- Lights and outlets to code
- Bathrooms per plan
- HVAC in good working order
- Typical commercial grade carpet or allowance to be agreed upon

795 Roosevelt Trail Ste 200, Windham, Maine 04062
207-775-3499/207-894-5391(fax)

This page contains a detailed description of the Parcel ID you selected.

[New Search!](#)**Current Owner Information:****Services**[Applications](#)[Doing Business](#)[Maps](#)[Tax Relief](#)[Tax Roll](#)[Q & A](#)[browse city
services a-z](#)[browse facts and
links a-z](#)Best viewed at
800x600, with
Internet Explorer

CBL	143 B001001
Land Use Type	MULTI-USE COMMERICAL
Verify legal use with Inspections Division	
Property Location	970 FOREST AVE
Owner Information	MARDIGAN STEPHEN E 460 BAXTER BLVD PORTLAND ME 04103
Book and Page	30715/251
Legal Description	143-B-1 FOREST AVE 970-976 MORGANS COURT 17868 SF
Acres	0.4102

Current Assessed Valuation:

TAX ACCT NO.	21340	OWNER OF RECORD AS OF APRIL 2015
LAND VALUE	\$181,100.00	MARDIGAN STEPHEN E
BUILDING VALUE	\$133,500.00	
NET TAXABLE - REAL ESTATE	\$314,600.00	460 BAXTER BLVD PORTLAND ME 04103
TAX AMOUNT	\$6,490.20	

Any information concerning tax payments should be directed to the
Treasury office at 874-8490 or [e-mailed](#).**Building Information:****Building 1**

Year Built	1986
Style/Structure Type	DAY CARE CENTER
# Units	1
Square Feet	6400

[View Sketch](#)[View Map](#)[View
Picture](#)**Exterior/Interior Information:****Building 1**

Levels	B1/B1
Size	3200
Use	MULTI-USE OFFICE
Height	8
Heating	HOT AIR
A/C	NONE

Stephen E. Mardigan

460 Baxter Blvd

Portland, Maine 04103

December 16, 2015

To: The City of Portland
From: Stephen E. Mardigan
Re: 970 Forest Ave
Planning Board

Gina Kostopoulos dba North Deering Children's Academy and/or her representative has my permission to represent me and my property located at 970 Forest Avenue at the planning board meeting.

If there are any questions or concerns please call me at 207-772-5555.

Thank you.

A handwritten signature in dark ink, appearing to read "Stephen E. Mardigan", is written over the "Thank you." text.

NDCA
GINA KOSTOPOULOS
5 BRAMBLEWOOD DR
PORTLAND, ME 04103

748

52-8769/2112

JAN 4, 2016

DATE

PAY TO THE ORDER OF City of PORTLAND

\$ 100.00

ONE HUNDRED

~~100~~ DOLLARS



Security
Features
Details on
Back.

CUMBERLAND
COUNTY
Federal Credit Union
101 GRAY ROAD
FALMOUTH, MAINE 04105

FOR

ZBA

Gina Kostopoulos

⑆ 211287696⑆ 10000254970106⑈ 0748

RECEIVED

JAN 04 2016

Dept. of Building Inspections
City of Portland Maine

Verrill Dana^{LLP}

Attorneys at Law

GORDON R. SMITH
COUNSEL
gsmith@verrilldana.com
Direct: 207-253-4926

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

November 25, 2015

Portland Board of Appeals
City Hall Inspections Office, Room 315
389 Congress St
Portland, ME 04101

**Re: Interpretation Appeal;
Provision of Pre-Packaged Food at Allagash Brewery Tasting Room**

Dear Members of the Board,

Allagash Brewing Company is appealing the zoning administrator's determination that provision of a small amount of pre-packaged food at the company's existing tasting room does not constitute an incidental accessory use to the company's brewery.

The Allagash brewery and tasting room are located within the city's I-M Moderate Impact Industrial Zone. Breweries are an explicitly permitted use within the I-M Zone. See § 14-247(a). "Incidental accessory uses" are also explicitly permitted. See § 14-247(s). As recently as 2013, the city has affirmed the facility's approved uses as brewery and warehouse with accessory tasting room and accessory retail sales of beer, clothing and other items associated with the brewery. Certificate of Occupancy attached as Exhibit A.

Allagash recently approached the city for permission to provide a small selection of pre-packaged snacks to the customers that visit the Allagash tasting room. The snacks would be located in a single shelving unit the size of a vending machine and would be available to customers on the honor system, with an unmanned box to hold payments. The city denied the proposal on the basis that it was outside the scope of the approved existing tasting room and retail accessory uses.

On the contrary, the proposed provision of a limited selection of pre-packaged food, the functional equivalent of a vending machine, is entirely consistent with the operation of the brewery's tasting room and retail sales and should be permitted.

First, the scope and intensity of the proposed packaged food service are completely subordinate to the existing tasting room and retail sales. The tasting room and retail area are housed in a 70' x 28' space with copious counter and table seating to accommodate the thousands of customers who visit the brewery every year. In addition, an even larger outdoor patio space is available to visitors in the warmer months. The proposed packaged food area is a single shelved cabinet with an approximately 4' x 2' footprint located in an unused alcove in the

tasting room. See photographs attached as Exhibit B; construction drawings attached as Exhibit C; and plot plan attached as Exhibit D.

Second, the availability of food is directly related and beneficial to the existing tasting room accessory use. This is not an attempt by Allagash to expand its commercial operation. Allagash is proposing to offer food primarily for the purpose of providing its existing tasting room visitors the opportunity to temper the potential effects of alcohol during a day of sampling beer. At Allagash and at other tasting rooms, food trucks will often, but not always, park outside to provide visitors with something to eat. Allagash proposes to have the snacks on hand so that food is available at all times. Visitors drive to and from the Allagash tasting room and the tasting rooms of other breweries. It is common sense for a tasting room to have some type of sustenance on hand for patrons who want it. In fact, state law requires bars to make food available for this very reason. See 28-A M.R.S.A. § 1065 (requiring bars to offer food at all times that liquor is for sale). The city's determination that limited food service is not encompassed within or related to the tasting room is directly at odds with the policy behind this state requirement.

Third, it is common practice for brewery and distillery tasting rooms to offer snacks or some kind of limited food service. A tour of tasting rooms in Portland indicates that snacks are frequently made available as part of the tasting room or retail sales operations. Accordingly, the city's determination is inconsistent with the reality of commonly accepted industry practices.

Fourth, the food service that Allagash is proposing is essentially a low-tech vending machine. A small assortment of snacks will be available in an unattended cabinet with five shelves and a box to accept payment made on the honor system. The only place that the Portland Land Use Ordinance mentions vending machines is as an example of concessions permitted in an airline terminal within the Airport Business Zone. See § 14-197.1(b)(2). Yet vending machines are found in commercial establishments throughout Portland. As such, it is not clear that installation of a vending machine, the functional equivalent of what Allagash is proposing, is even regulated within the I-M Zone. If the city were to enforce its interpretation of the Allagash proposal uniformly, it would have to remove all vending machines from the array of commercial, institutional and recreational facilities within the I-M Zone, an area that encompasses much of the Riverside Street corridor, Presumpscot Street, Canco Road and Outer Congress.

Finally, even if the pre-packaged snack service proposed by Allagash did not fit within the scope of the approved accessory tasting room and retail sales operation, it would be permitted under the I-M Zone's Performance Based Uses provision. See § 14-248. This provision permits uses that are either expressly prohibited or not expressly permitted as long as the use is consistent with the purpose of the I-M Zone, does not negatively impact the environment or property values, and does not create "significant hazards to the health or safety of neighboring residents." Id. It is difficult to imagine how the availability of a limited selection of snacks at the existing tasting room would create any impacts at all. In fact, as discussed above, the provision of food is expected to have a positive effect on the health and safety of the neighborhood.

For the foregoing reasons, we respectfully request that the Board find that, pursuant to section 14-247 of the Portland Land Use Ordinance, the provision of pre-packaged food as described above is within the scope of the existing Allagash tasting room, which is a permitted incidental accessory use to the Allagash brewery. In the alternative, we respectfully request that

November 25, 2015

Page 3

the Board find that the provision of pre-packaged food as described above is permitted as a performance based use under section 14-248 of the Portland Land Use Ordinance.

Thank you for your time and attention to this matter. I look forward to answering any questions at your next available meeting.

Sincerely,

A handwritten signature in blue ink, appearing to be "Gordon R. Smith", written over the printed name.

Gordon R. Smith



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

Allagash Brewing Co.

BUSINESS NAME

50 Industrial Way

BUSINESS ADDRESS

878-5385 jperry@allagash.com

BUSINESS TELEPHONE & E-MAIL

Deeds & Lease Agreement

APPLICANT'S RIGHT/TITLE/INTEREST

I-M

CURRENT ZONING DESIGNATION

EXISTING USE OF THE PROPERTY:

Brewery and warehouse with accessory tasting room and retail sales**Subject Property Information:**50 Industrial Way

PROPERTY ADDRESS

326 B009001

CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (If Different)

ADDRESS (If Different)

PHONE # AND E-MAIL

DISPUTED PROVISIONS FROM SEC 14- 247

ORDER, DECISION, DETERMINATION OR INTERPRETATION UNDER DISPUTE:

November 3, 2015 determination that "selling food is not an 'incidental accessory use' to a brewery" and denial of proposal to have pre-packaged food available to tasting room visitors.

TYPE OF RELIEF REQUESTED

Determination that availability of pre-packaged food in tasting room fits within
scope of tasting room accessory use.

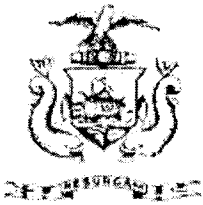
NOTE: If site plan approval is required, attach preliminary or final site plan.

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.

SIGNATURE OF APPLICANT

DATE

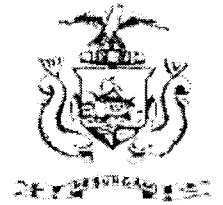
EXHIBIT A



Certificate of Occupancy

CITY OF PORTLAND, MAINE

Department of Planning and Urban Development
Building Inspections Division



Location: 50 Industrial Way

CBL: 326 B009001

Issued To: 50 Industrial Way Llc

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:

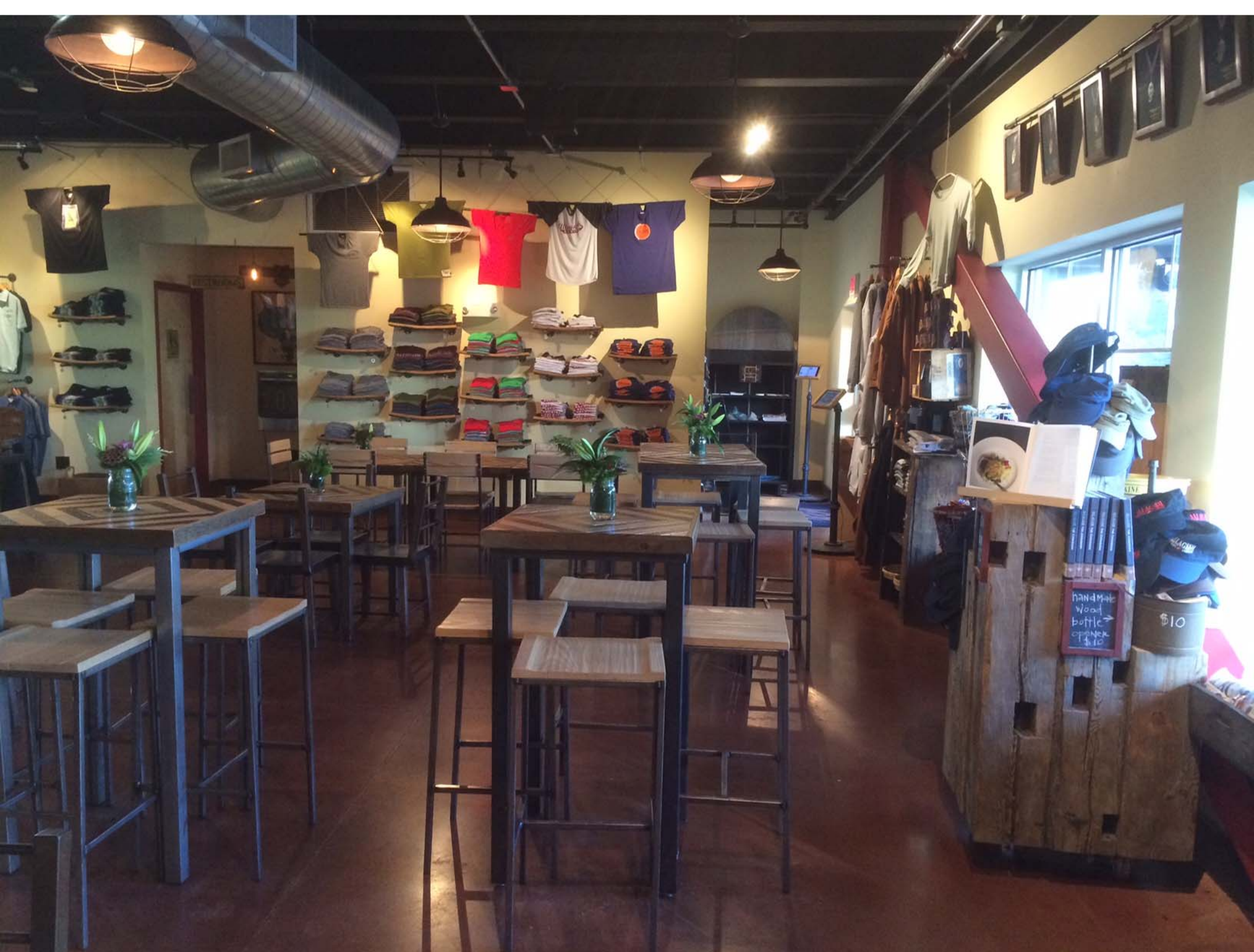
Inspector

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 B





COLD BEER



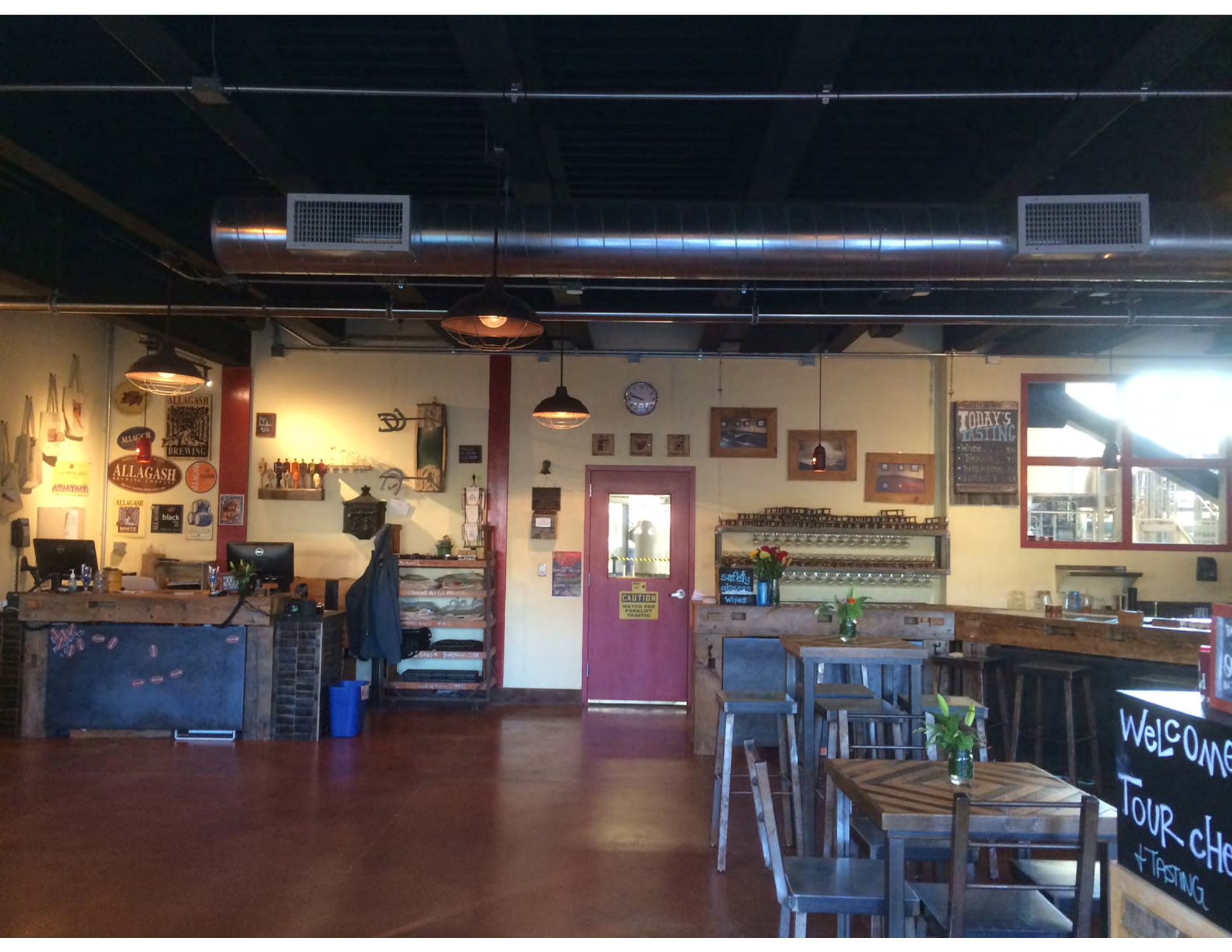










EXHIBIT C

NEW ADDITION FOR ALLAGASH BREWING COMPANY

50 INDUSTRIAL WAY

PORTLAND, MAINE

ISSUED FOR CONSTRUCTION

ABBREVIATIONS				GENERAL NOTES				MATERIALS				SYMBOLS				DRAWING INDEX			
AF ALUM OR AL	ABOVE FIFTH FLOOR AUXILIARY	AC ACoustICAL	ACoustICAL WALL PANEL	HC HEAD	HD HEAD	HW HEAD	HT HEAD	HC HEAD	HD HEAD	HW HEAD	HT HEAD	HC HEAD	HD HEAD	HW HEAD	HT HEAD	HC HEAD	HD HEAD	HW HEAD	HT HEAD
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CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE	CB CONCRETE
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ARCHITECTURE
INTERIOR DESIGN
P.O. BOX 6179 FALMOUTH, MAINE 04105
(207) 871-5900

COVER SHEET

SCALE AS NOTED
DATE 10 SEPT. 12
DRAWN BY SAM/MPH
JOB NO. 120701
DRAWING NO. A0.0

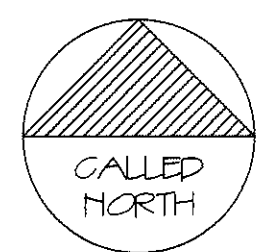
REVISIONS
11/1/12
SUPERCEDES
PREVIOUS ISSUES

NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

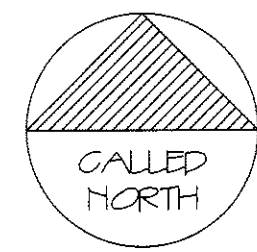
JOB TITLE

LICENSED ARCHITECT
MICHAEL F. HAYS
No. 1724
STATE OF MAINE

101 INDUSTRIAL WAY
PORTLAND, MAINE 04105
(207) 871-9508



	EXISTING BUILDING - 16,900 S.F.
	NEW ADDITION - 5,900 S.F.
TOTAL AREA = 22,800 S.F.	

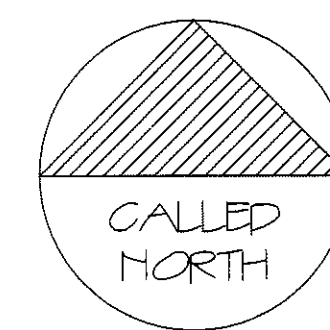


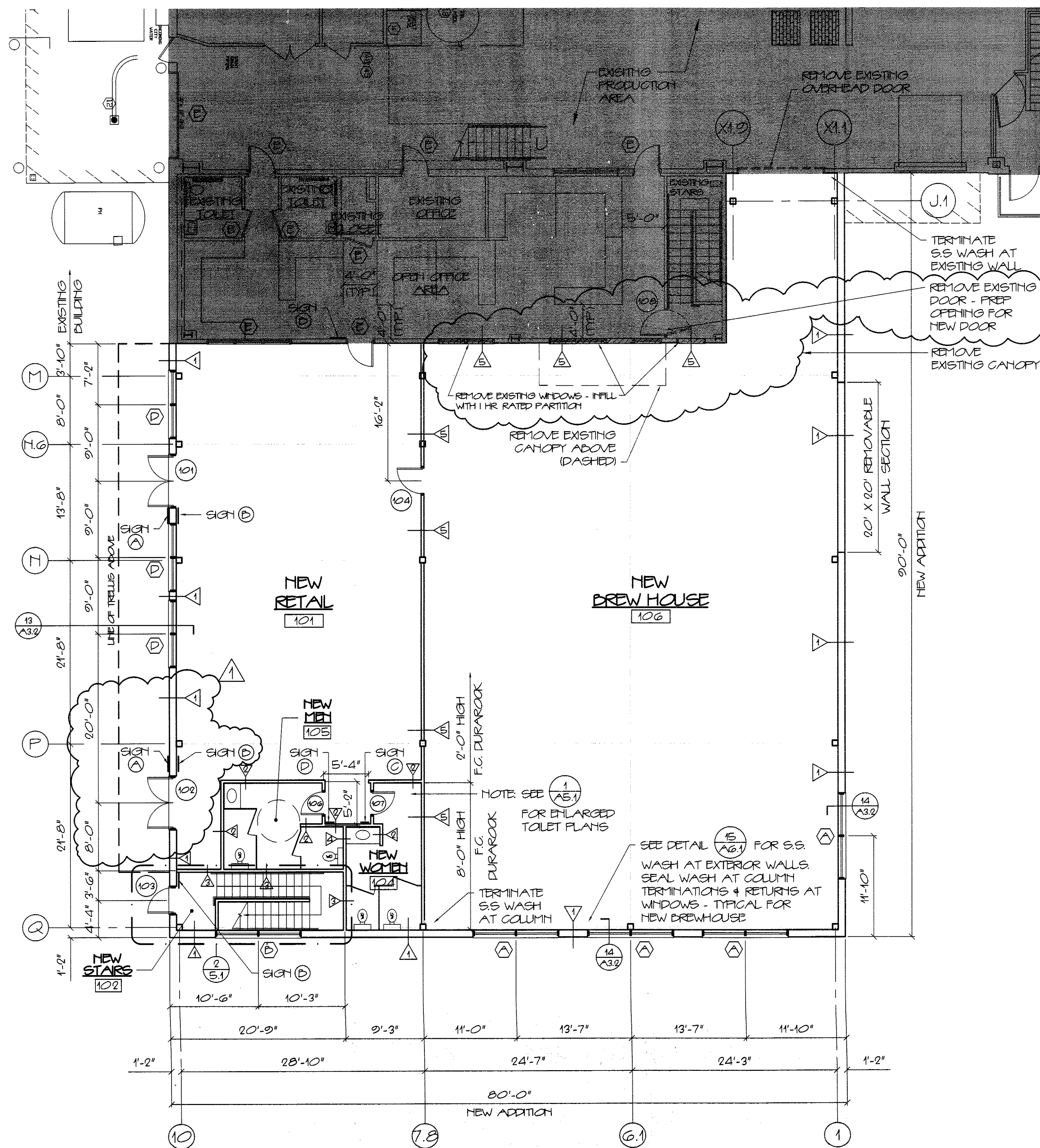
	EXISTING BUILDING	-	3,656 S.F.
	NEW ADDITION	-	2,400 S.F.
TOTAL AREA		=	6,056 S.F.

G R A N T	DRAWING NO.	A1.1
	JOB NO.	120701
	DRAWN BY	SAM/MFH
	DATE	10 SEPT. 12
	SCALE	1/16" = 1'-0"
	FACILITY FLOOR PLANS	
HAYSTACK	ARCHITECTURE INTERIOR DESIGN	
	P.O. BOX 6179 FALMOUTH, MAINE 04105	
ASSOCIATES	NEW ADDITION FOR ALLAGASH BREWING CO.	
	50 INDUSTRIAL WAY PORTLAND, MAINE	
REVISIONS		
	A 11/1/12 SUPERCEDES PREVIOUS ISSUES	
STATE OF MAINE		
	Job Title:	



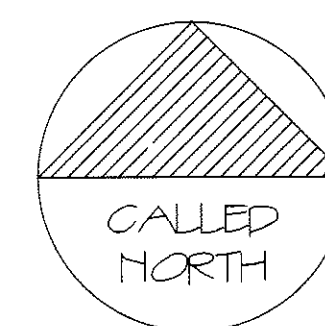
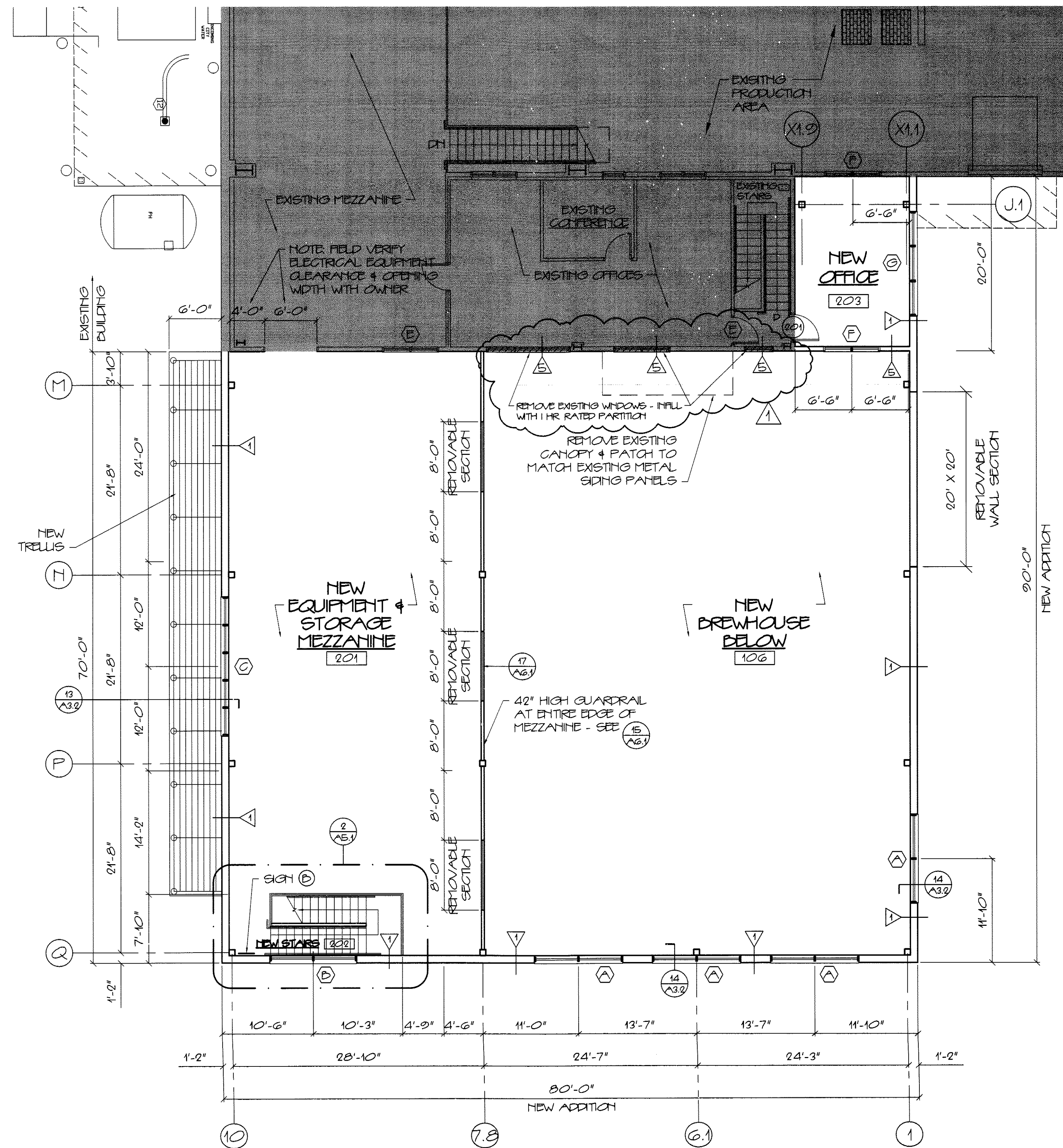
2 SECOND FLOOR NEW ADDITION CODE COMPLIANCE PLAN
SCALE: 1/8" = 1'-0"



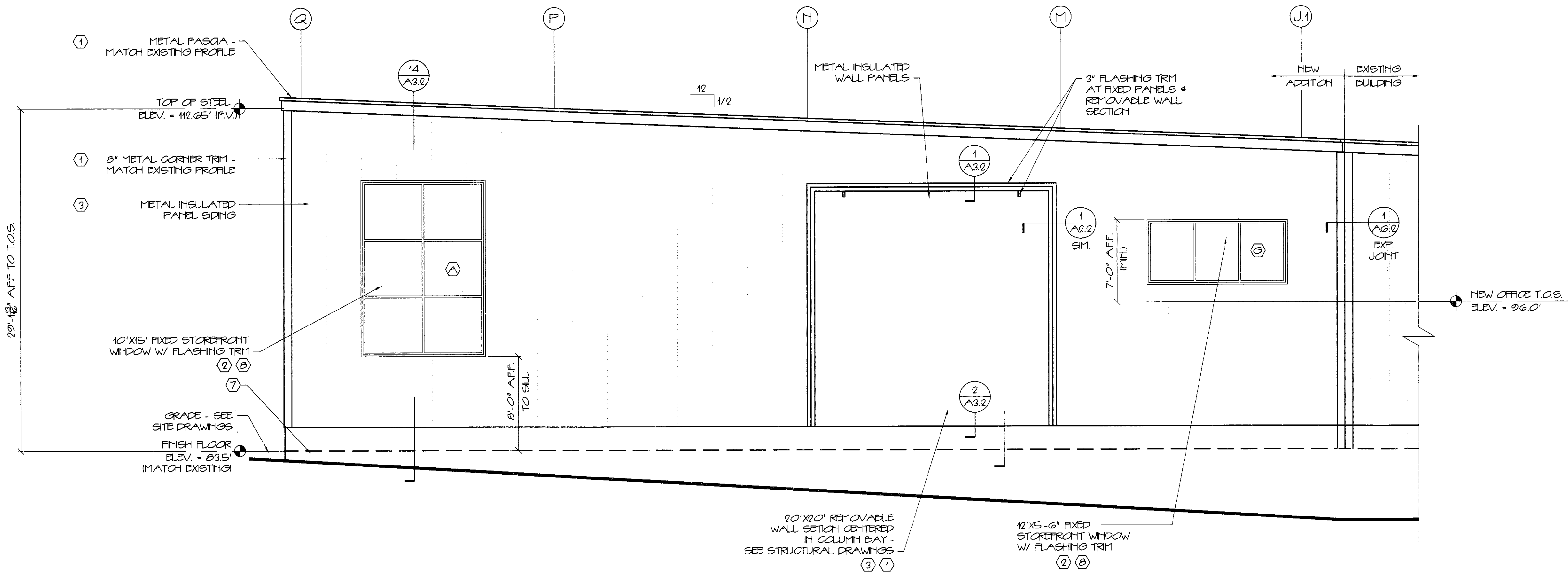


PARTITION TYPES	
TAG	DETAIL
	
	
	
	
	

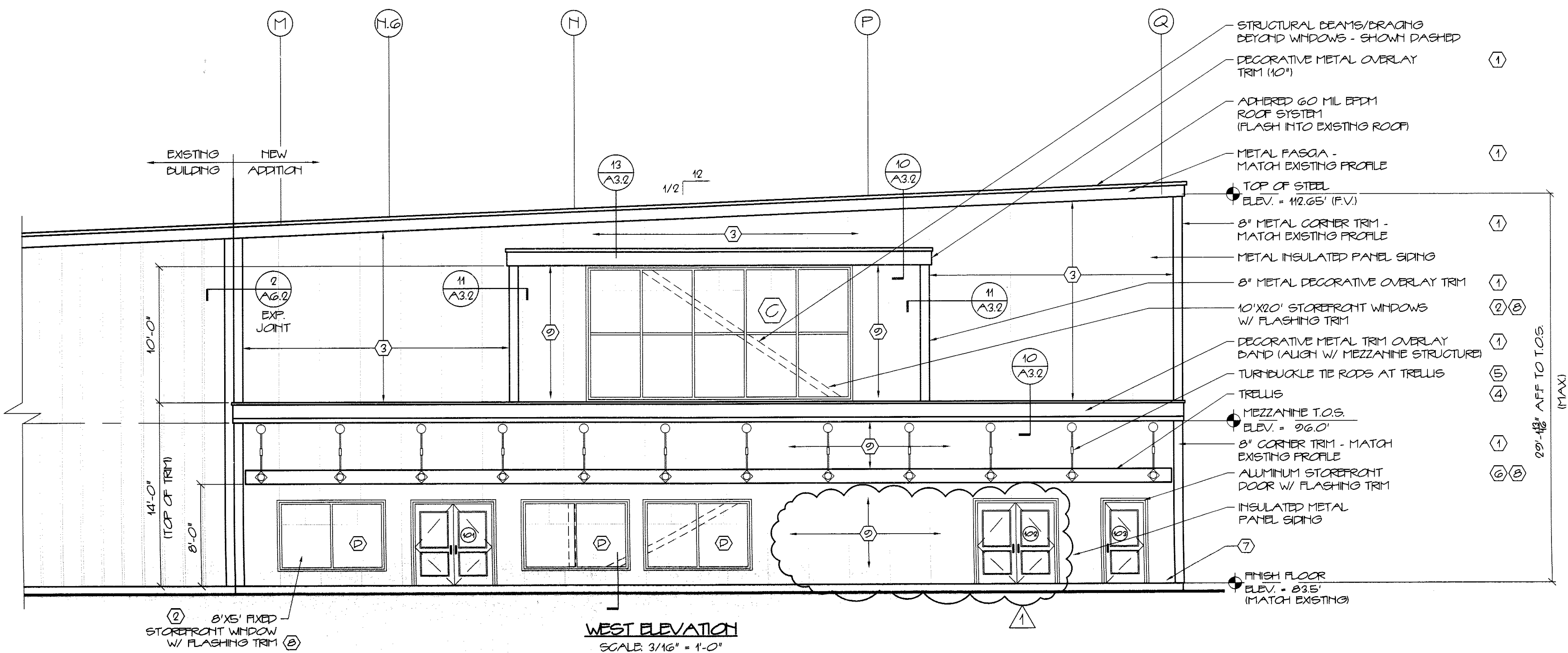
SIGNAGE TYPES	
TAB	DETAIL
(A)	
(B)	
(C)	
(D)	



GRANT	HAYS	ASSOCIATES	ESTABLISHED
ENLARGED ADDITION PLANS		ARCHITECTURE INTERIOR DESIGN P.O. BOX 6179 FALMOUTH, MAINE 04105 TELEPHONE (207) 871-5900 FACSIMILE (207) 871-9308	
SCALE AS NOTED		REVISIONS 1 11/1/12 SUPERCEDES PREVIOUS ISSUES	
DATE 10 SEPT. 12		NEW ADDITION FOR ALLAGASH BREWING CO. 50 INDUSTRIAL WAY PORTLAND, MAINE	
DRAWN BY SAM/MFH			
JOB NO. 120701			
DRAWING NO.		JOB TITLE	
A1.4			



EAST ELEVATION
SCALE: 3/16" = 1'-0"

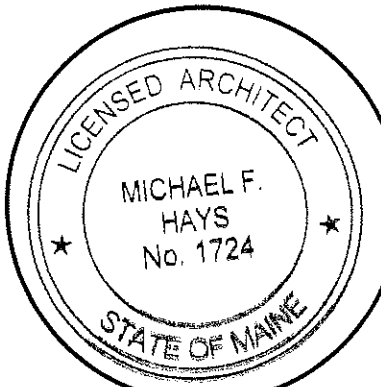


WEST ELEVATION
SCALE: 3/16" = 1'-0"

COLOR SCHEDULE	
TAG	COLOR
1	LIGHT BRONZE
2	MILL ALUMINUM
3	LIGHT STONE
4	"RUSTED" STEEL
5	"GALVANIZED" STEEL & ROUGH TIMBER
6	MILL ALUMINUM
7	CONCRETE
8	LIGHT BRONZE
9	BLUE
10	(RESERVED)

NOTE: MATCH EXISTING BUILDING INSULATED EXTERIOR METAL PANELS FROM 2010 ADDITION AT NEW BUILDING ADDITION MATCH TRIM PROFILES AND COLORS AS INDICATED AND AS RESCINABLY AVAILABLE.

G R A N T H A Y S A S S O C I A T E S



REVISIONS
1 11/1/12 SUPERCEDES PREVIOUS ISSUES

JOB TITLE

NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

ARCHITECTURE INTERIOR DESIGN

P.O. BOX 6179 FALMOUTH, MAINE 04105
(207) 871-5900 (207) 871-9308

DRAWING TITLE

ADDITION EXTERIOR ELEVATIONS

SCALE

AS NOTED

DATE

10 SEPT. 12

DRAWN BY

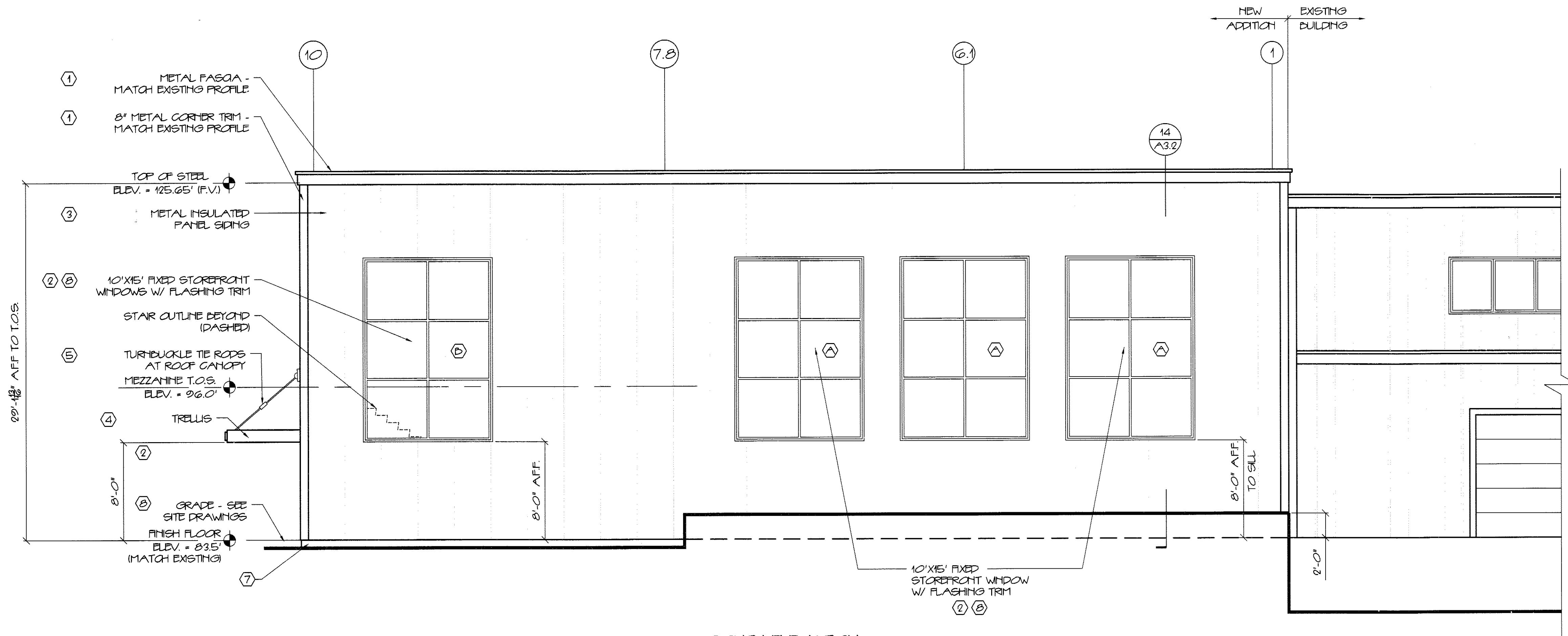
SAM/MPH

JOB NO.

120701

DRAWING NO.

A2.1



SOUTH ELEVATION
SCALE 3/16" = 1'-0"

COLOR SCHEDULE	
TAG	COLOR
1	LIGHT BRONZE
2	MILL ALUMINUM
3	LIGHT STONE
4	"RUSTED" STEEL
5	"GALVANIZED" STEEL & ROUGH TIMBER
6	MILL ALUMINUM
7	CONCRETE
8	LIGHT BRONZE
9	BLUE
10	(RESERVED)

GRANT ASSOCIATES

ARCHITECTURE
INTERIOR DESIGN
P.O. BOX 6179 FALMOUTH, MAINE 04105
(207) 871-5900
(207) 871-9908

NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

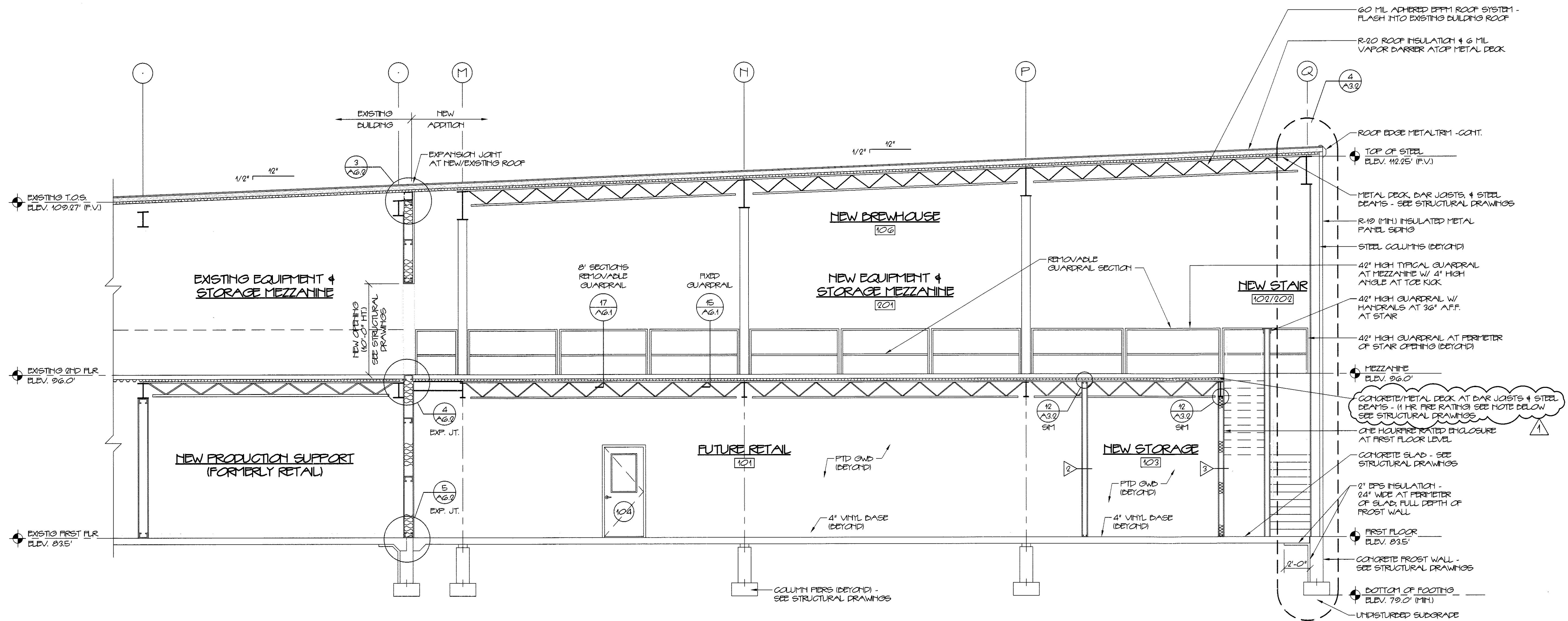
ADDITON
EXTERIOR
ELEVATIONS

SCALE AS NOTED
DATE 10 SEPT. 12
DRAWN BY SAM/MPH
JOB NO. 120701
DRAWING NO. **A2.2**

REVISIONS

LICENSED ARCHITECT
MICHAEL F. HAYS
No. 1724
STATE OF MAINE

JOB TITLE



TYPICAL NEW ADDITION BUILDING SECTION
SCALE: 1/4" = 1'-0"

NOTE: NEW MEZZANINE FLOOR CONSTRUCTION CONSISTS OF STRUCTURAL METAL DECKING, MINIMUM 1 1/2" CONCRETE TOPPING WITH WELDED WIRE MESH REINFORCING PER UL DESIGN NO. D064 - 1 HOUR ASSEMBLY RATING

REVISIONS	
1	11/1/12 SUPERCEDES PREVIOUS ISSUES

NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY
PORTLAND, MAINE

ARCHITECTURE
INTERIOR DESIGN
P.O. BOX 6179 FALMOUTH, MAINE 04105

ADDITION
BUILDING SECTIONS

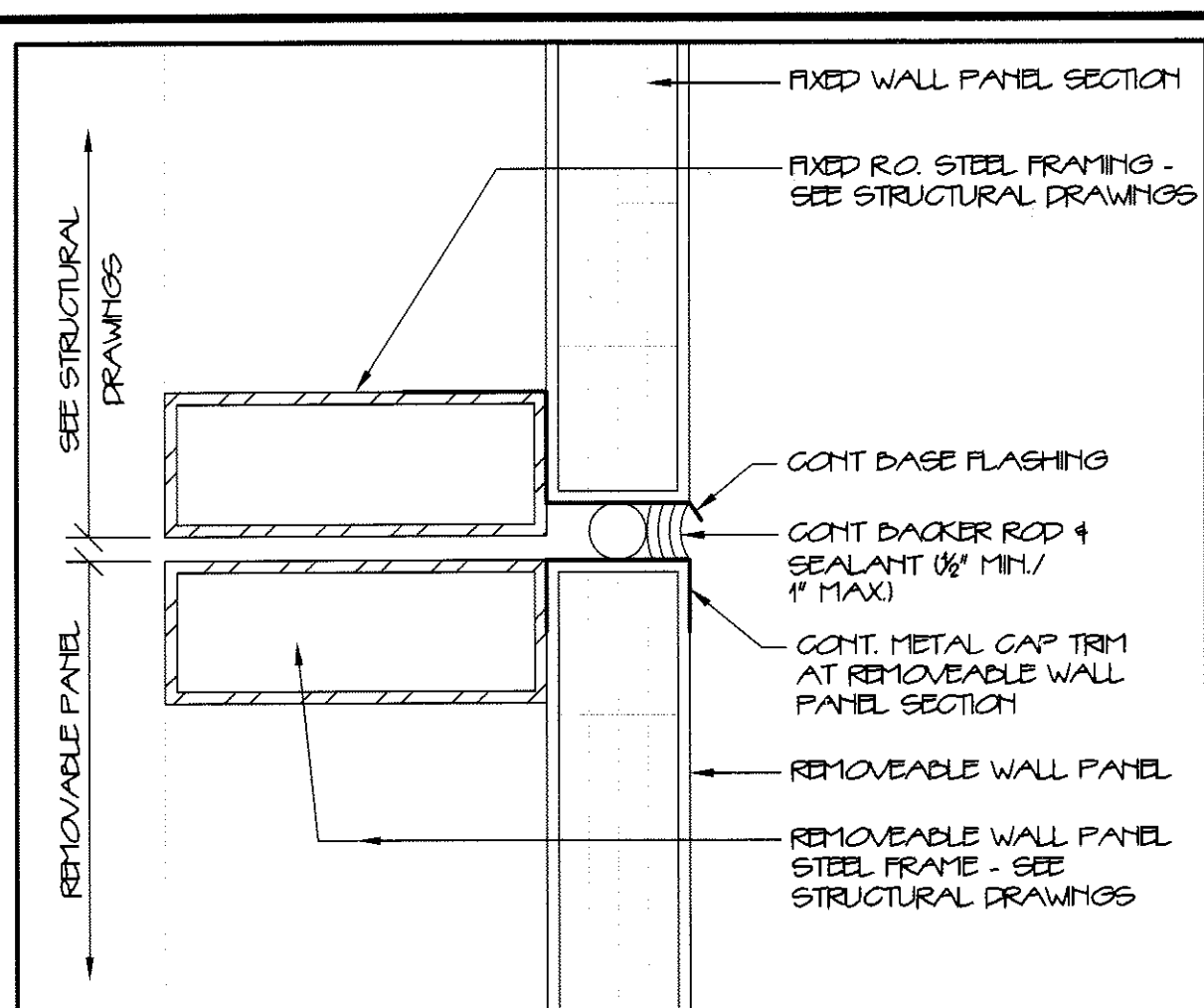
SCALE	1/4" = 1'-0"
DATE	10 SEPT. 12
DRAWN BY	SAM/MPH
JOB NO.	120701
DRAWING NO.	A3.1

JOB TITLE

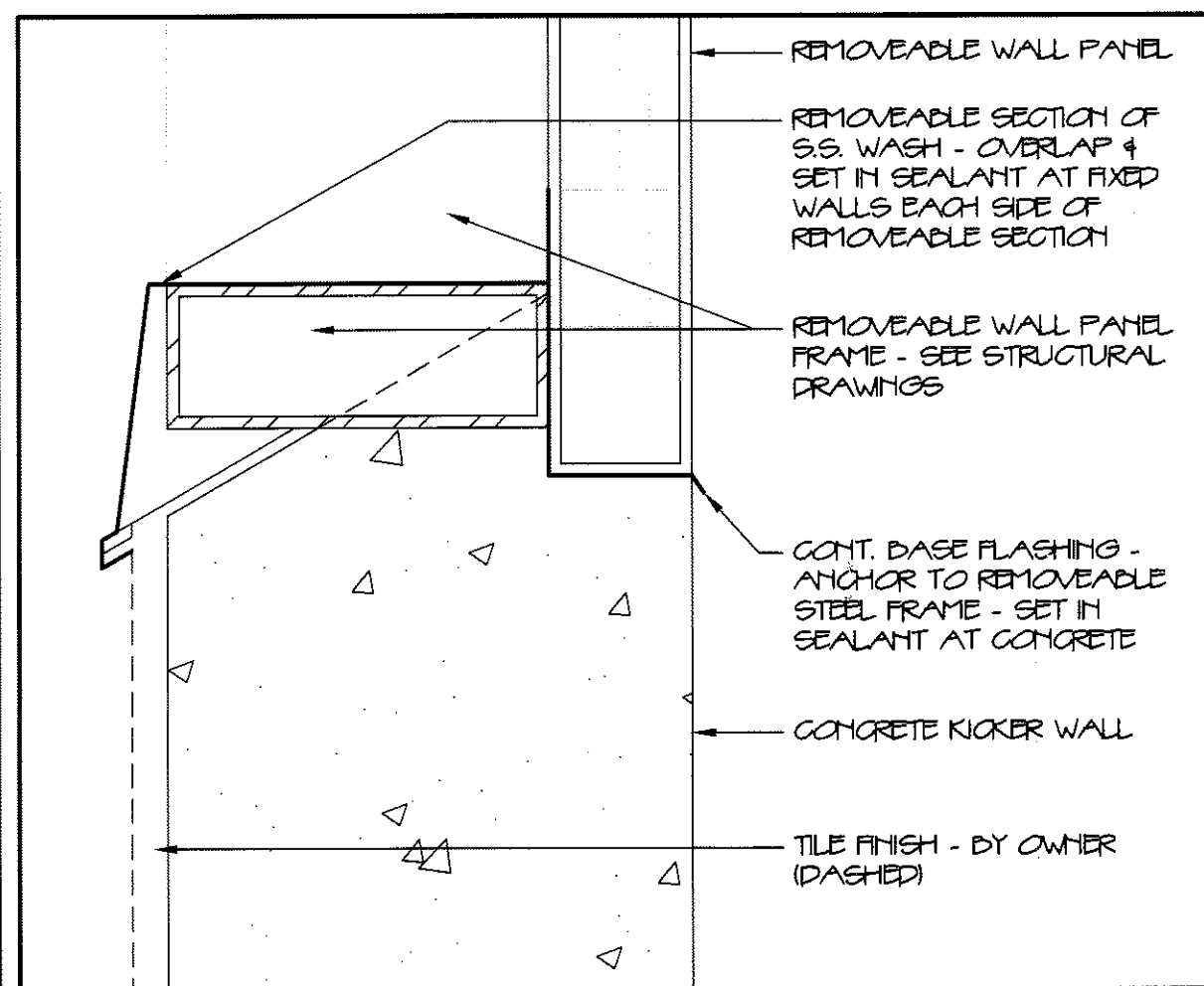
(207) 871-9306

(207) 871-5800

DRAWING TITLE



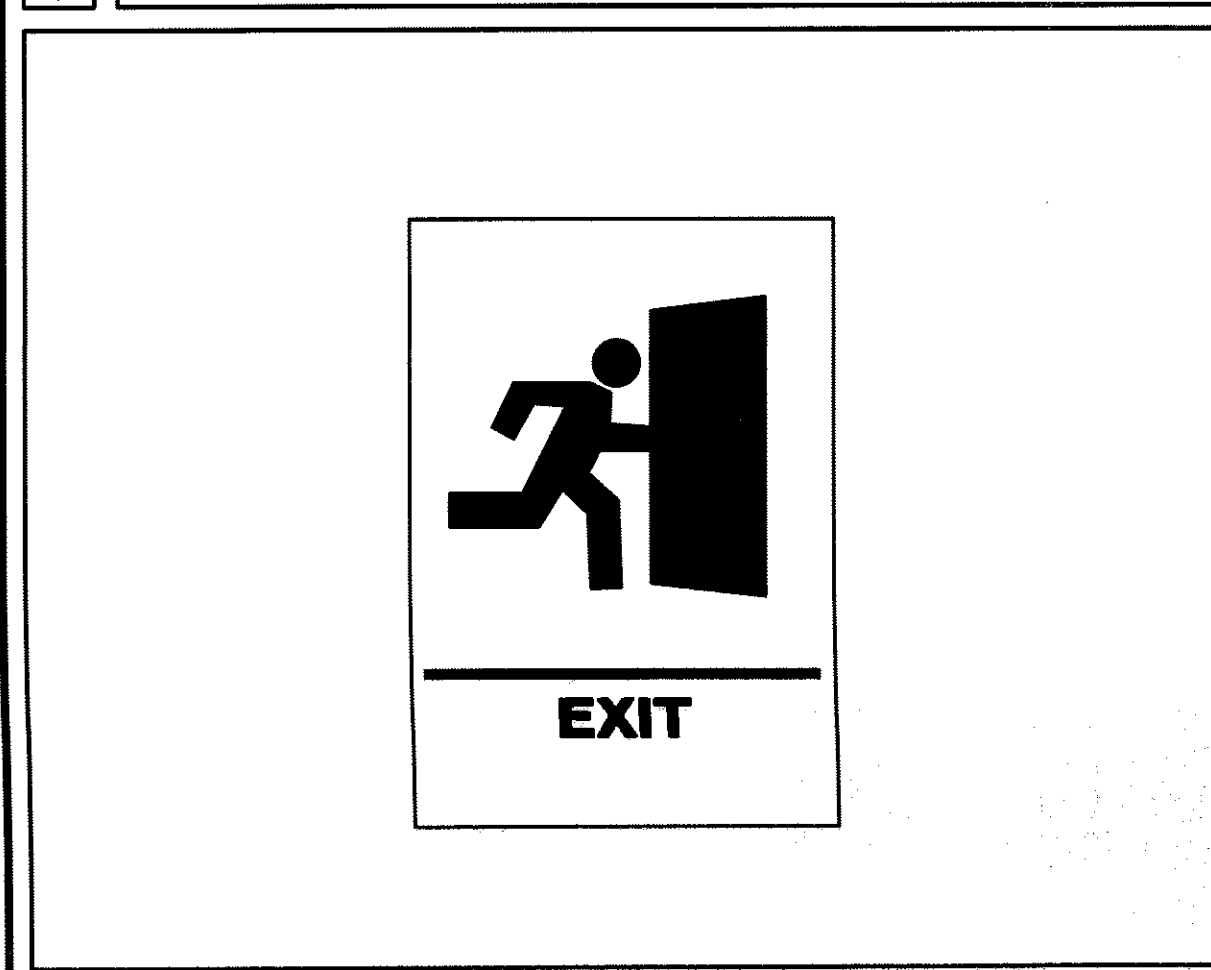
1 REMOVABLE WALL AT HEAD (JAMB SILL) 3'-1'-0"



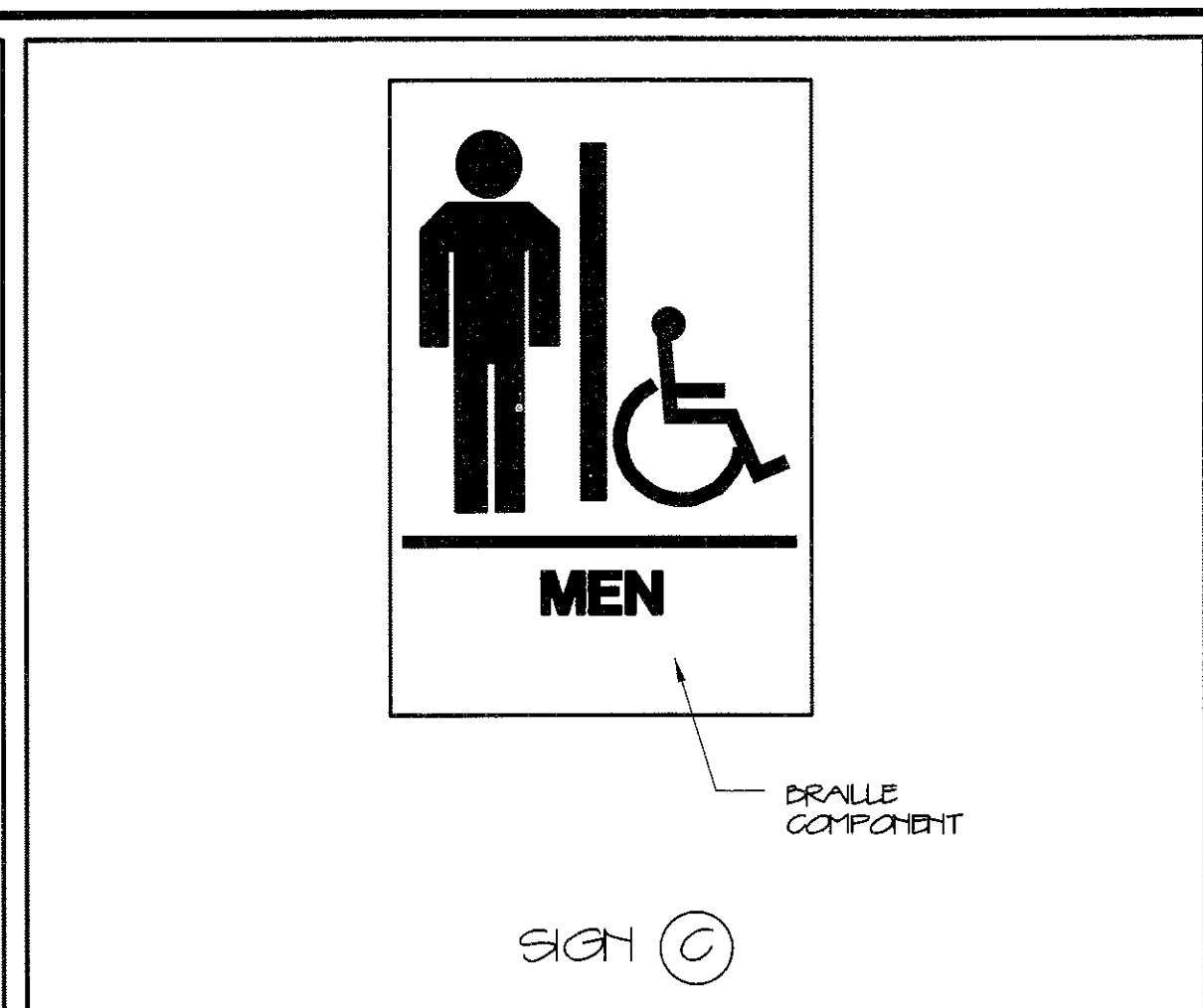
2 REMOVABLE WALL AT SILL 3'-1'-0"



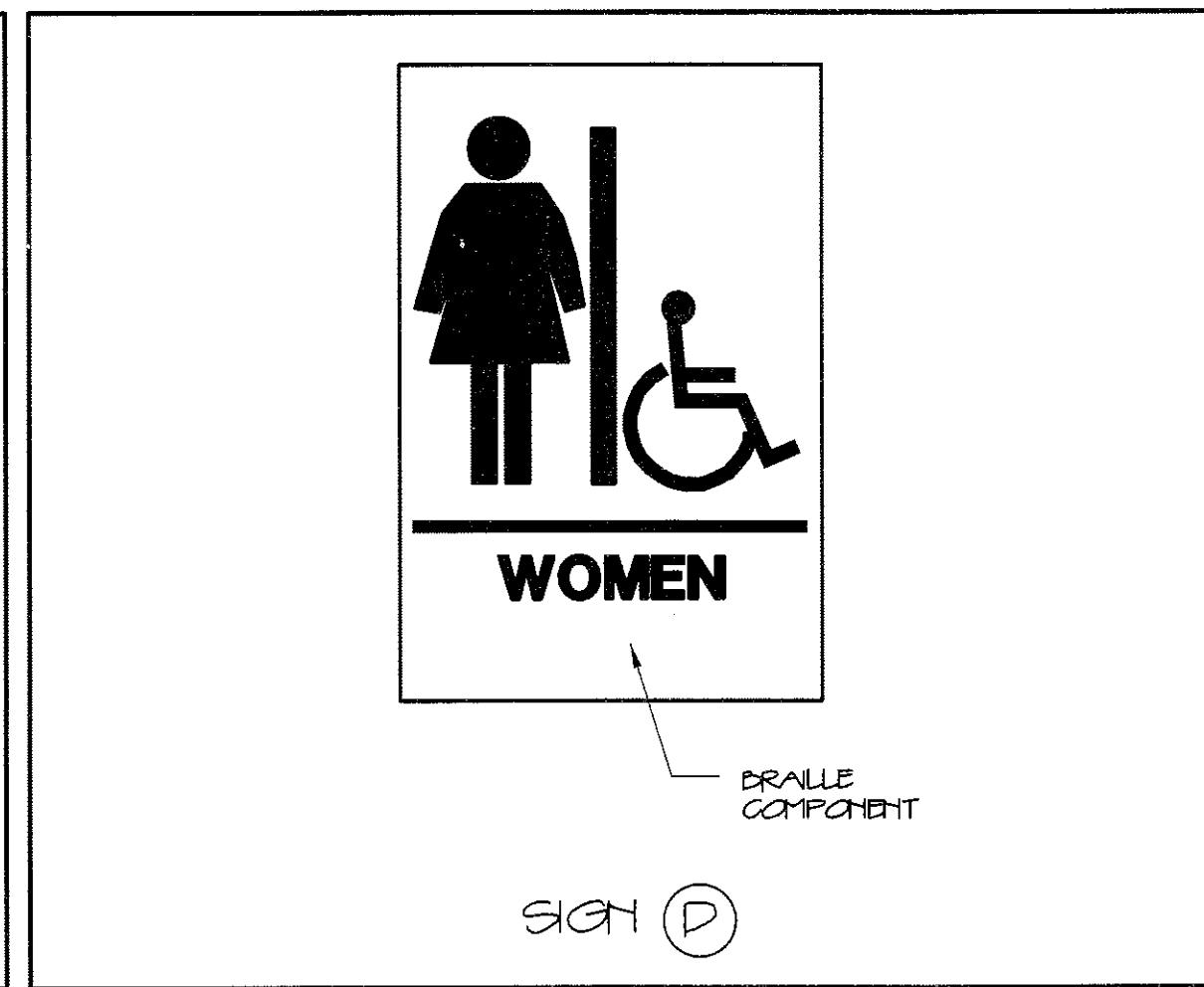
3 ACCESSIBLE ENTRANCE SIGN N.T.S.



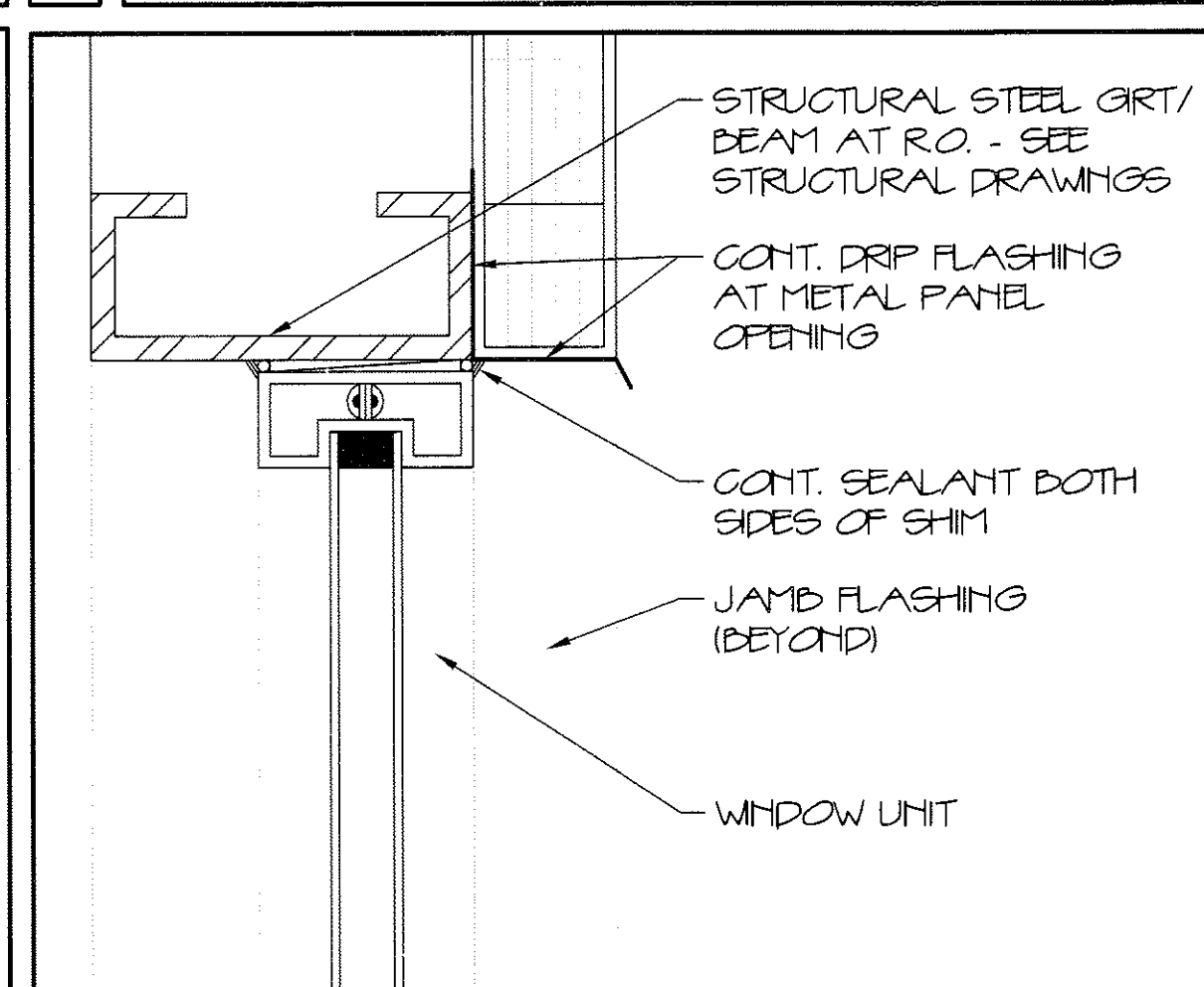
4 EXIT SIGN N.T.S.



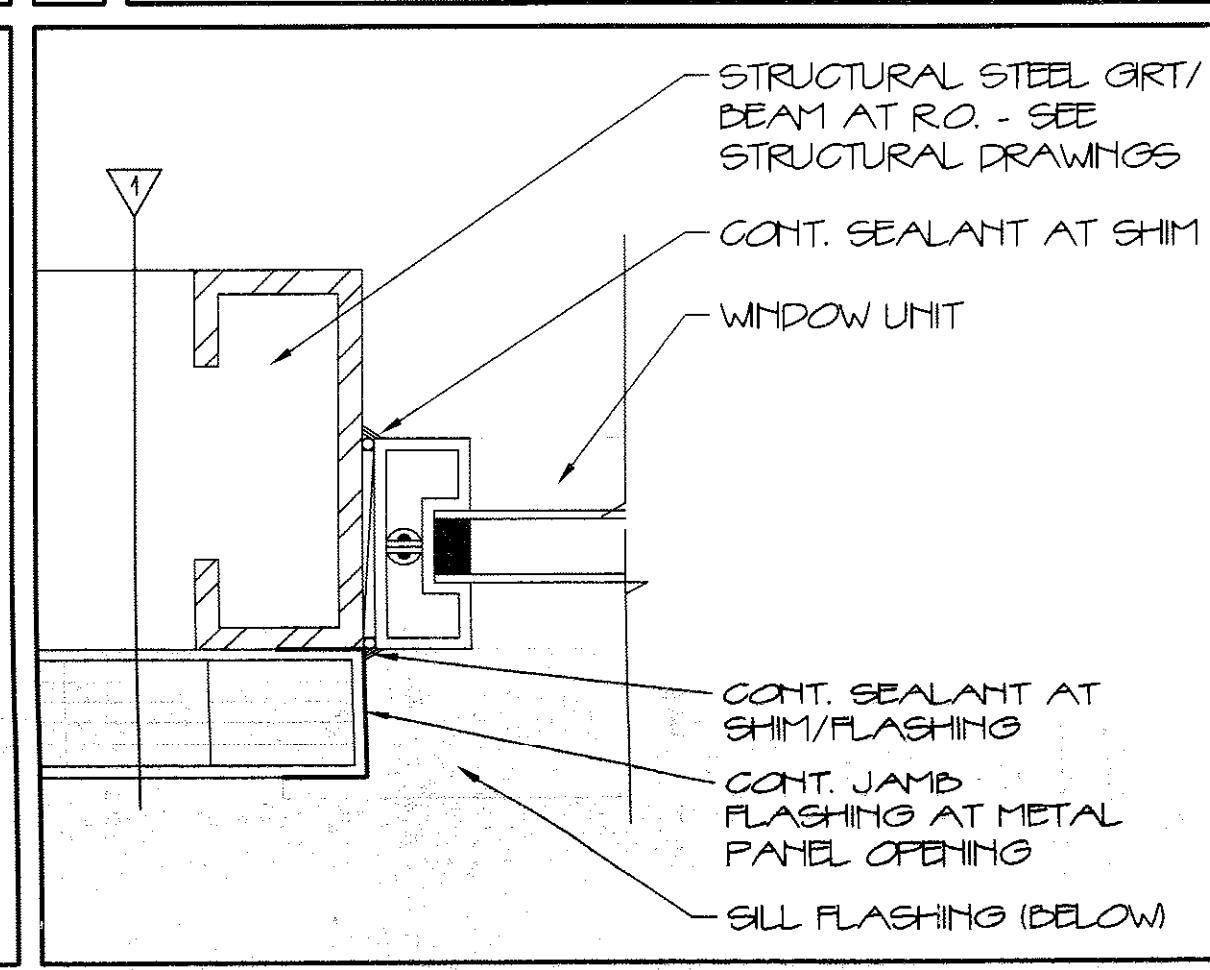
5 ACCESSIBLE MEN'S TOILET SIGN N.T.S.



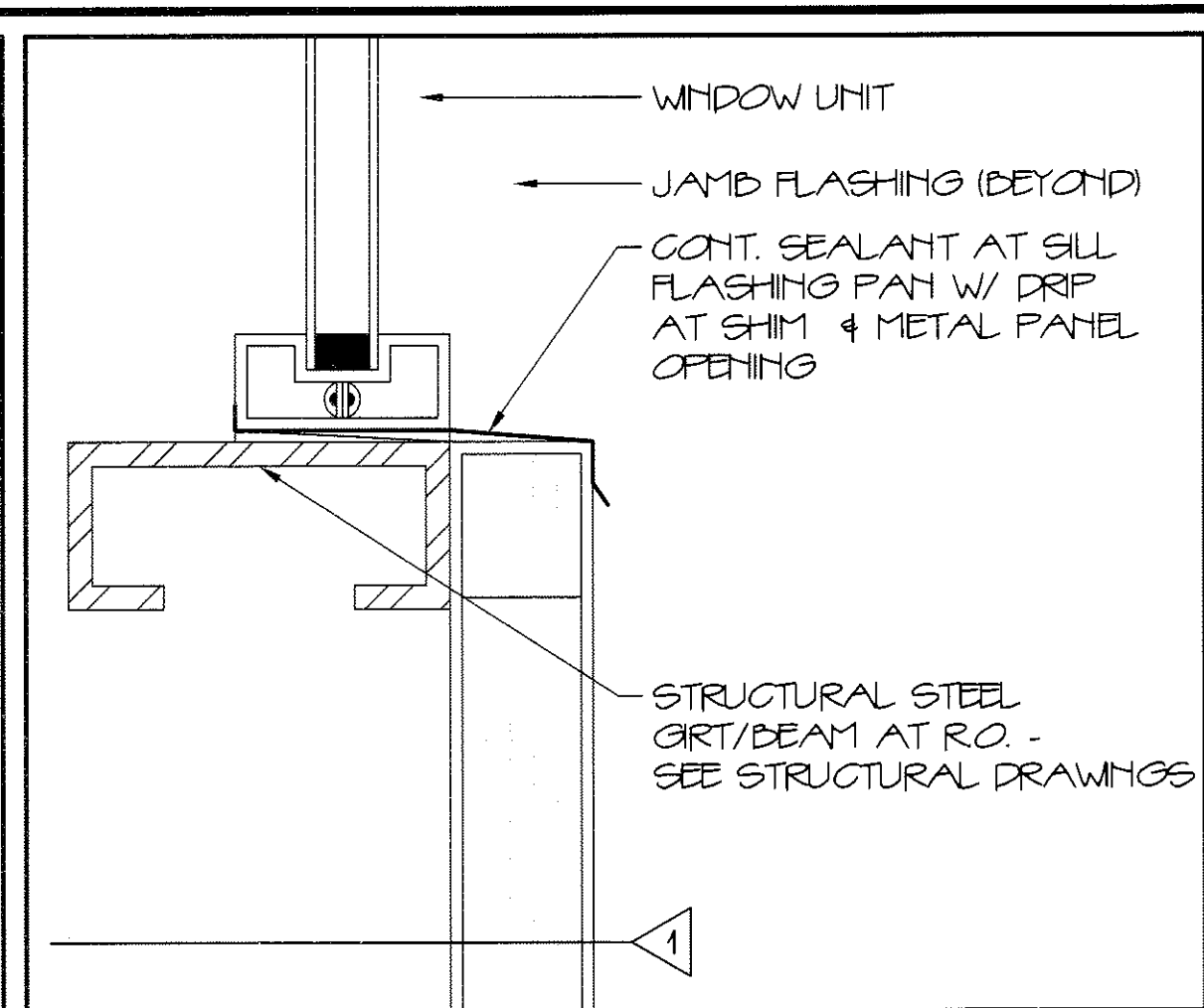
6 ACCESSIBLE WOMEN'S TOILET SIGN N.T.S.



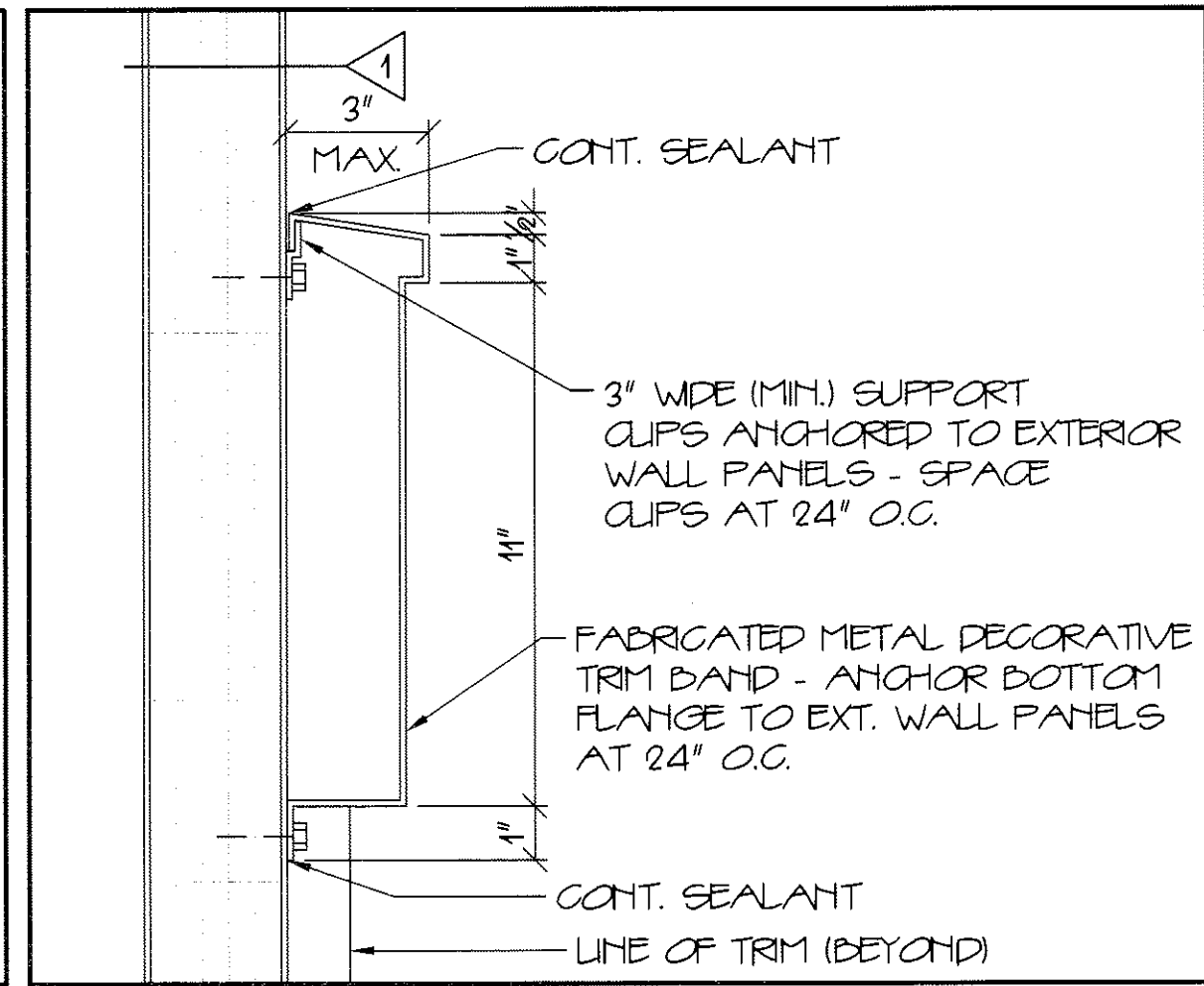
7 EXT. WINDOW HEAD DETAIL 3'-1'-0"



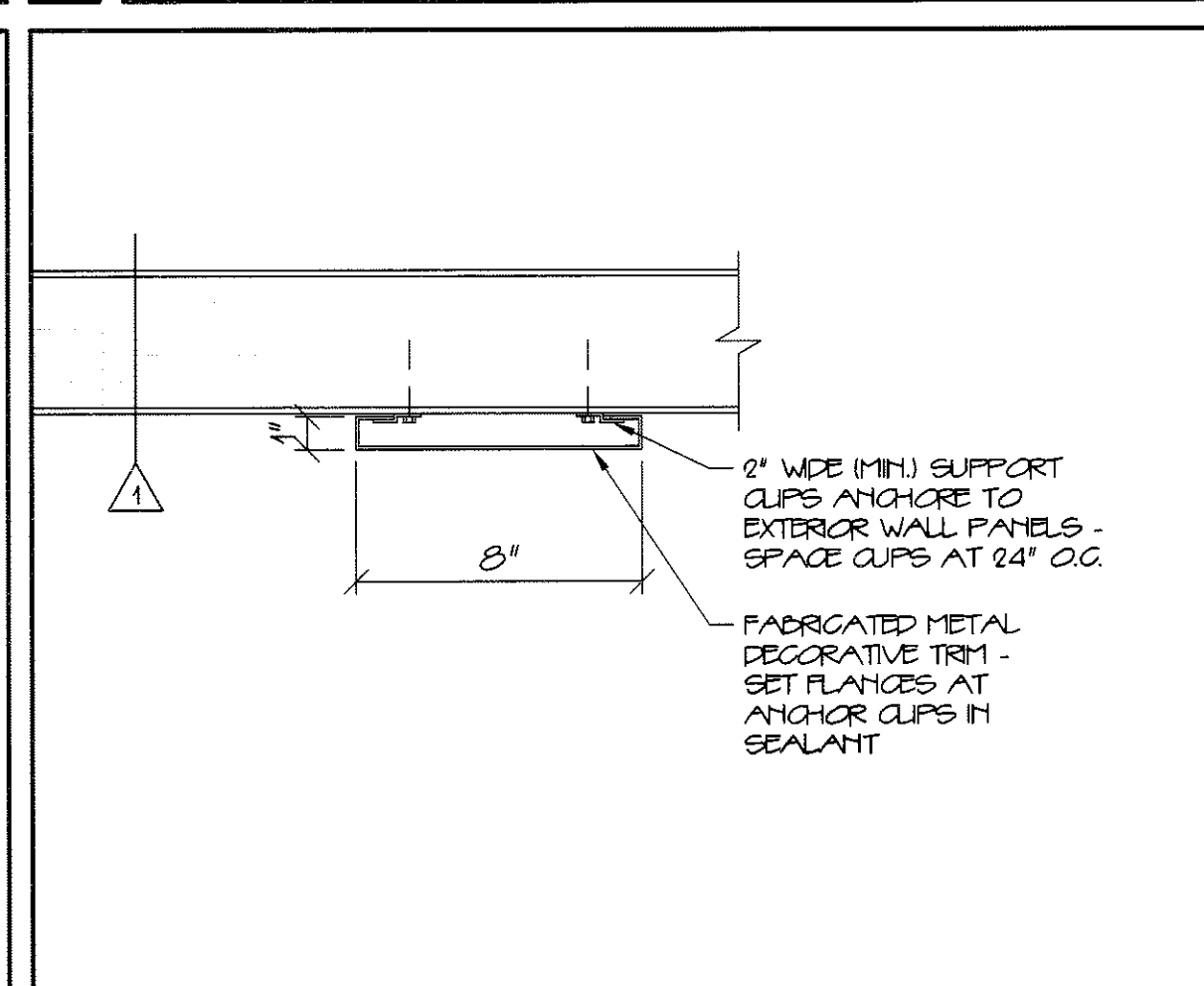
8 EXT. WINDOW JAMB DETAIL 3'-1'-0"



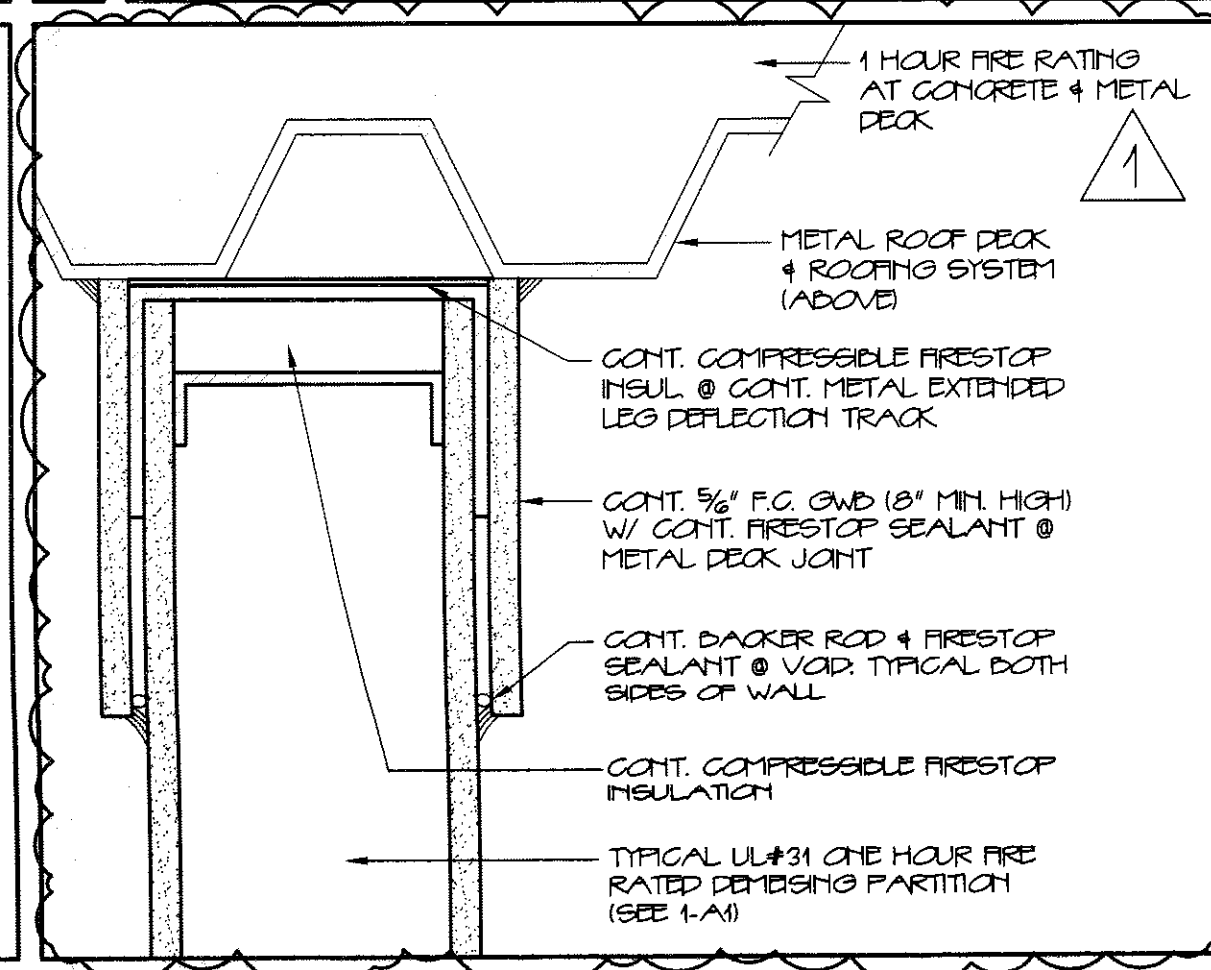
9 EXT. WINDOW SILL DETAIL 3'-1'-0"



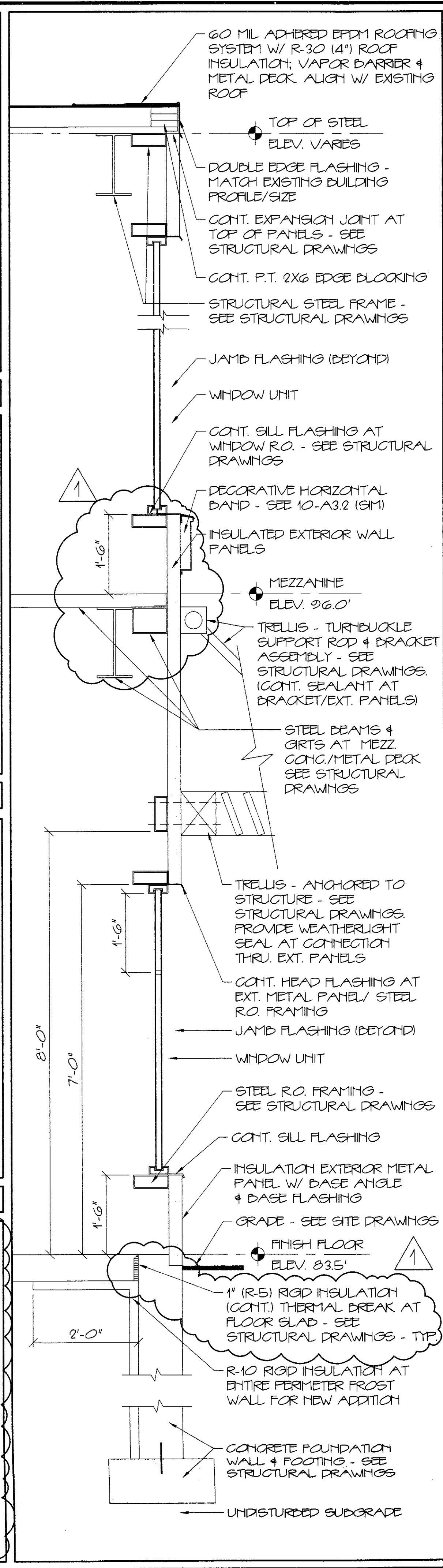
10 DECORATIVE HORIZONTAL BAND 3'-1'-0"



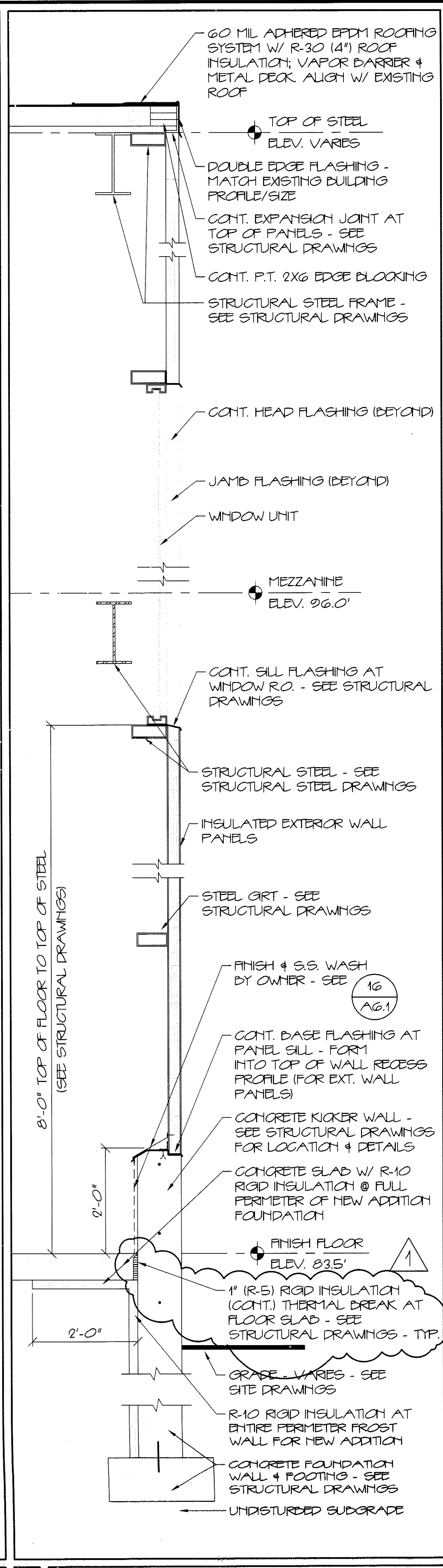
11 DECORATIVE VERTICAL TRIM 3'-1'-0"



12 TYPICAL 1 HR RATED DEFLECTION TRACK 3'-1'-0"



13 TYPICAL EXTERIOR WALL SECTION - WEST 3'-1'-0"



14 TYPICAL EXTERIOR WALL SECTION - EAST 3'-1'-0"

REVISIONS
11/1/12 SUPERSEDES PREVIOUS ISSUES

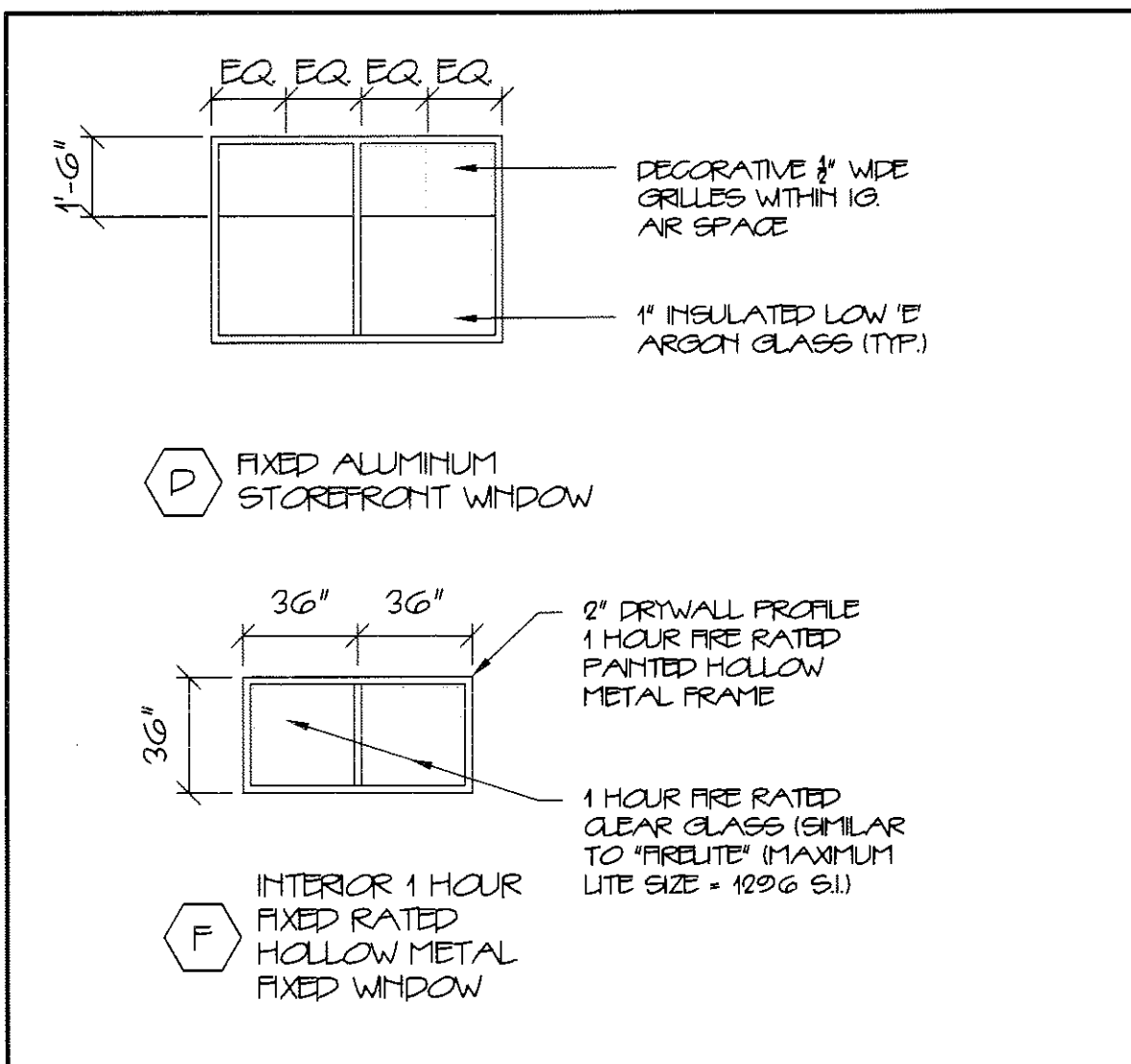
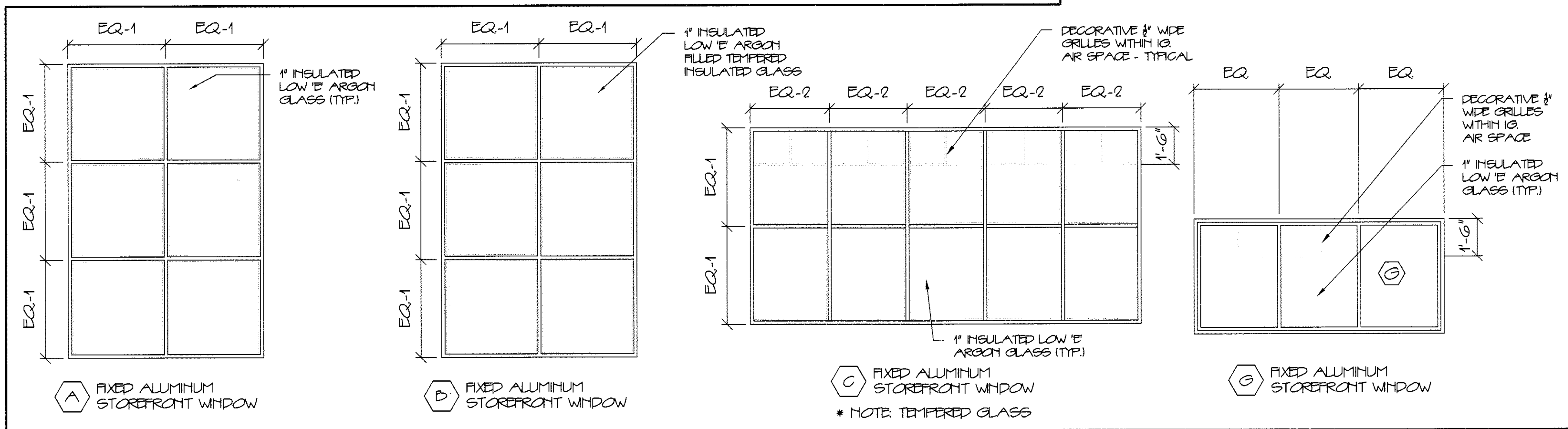
NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

ARCHITECTURE
INTERIOR DESIGN
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(207) 871-5900

SCALE 1/4" = 1'-0"
DATE 10 SEPT. 12
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JOB NO. 120701
DRAWING NO. A3.2

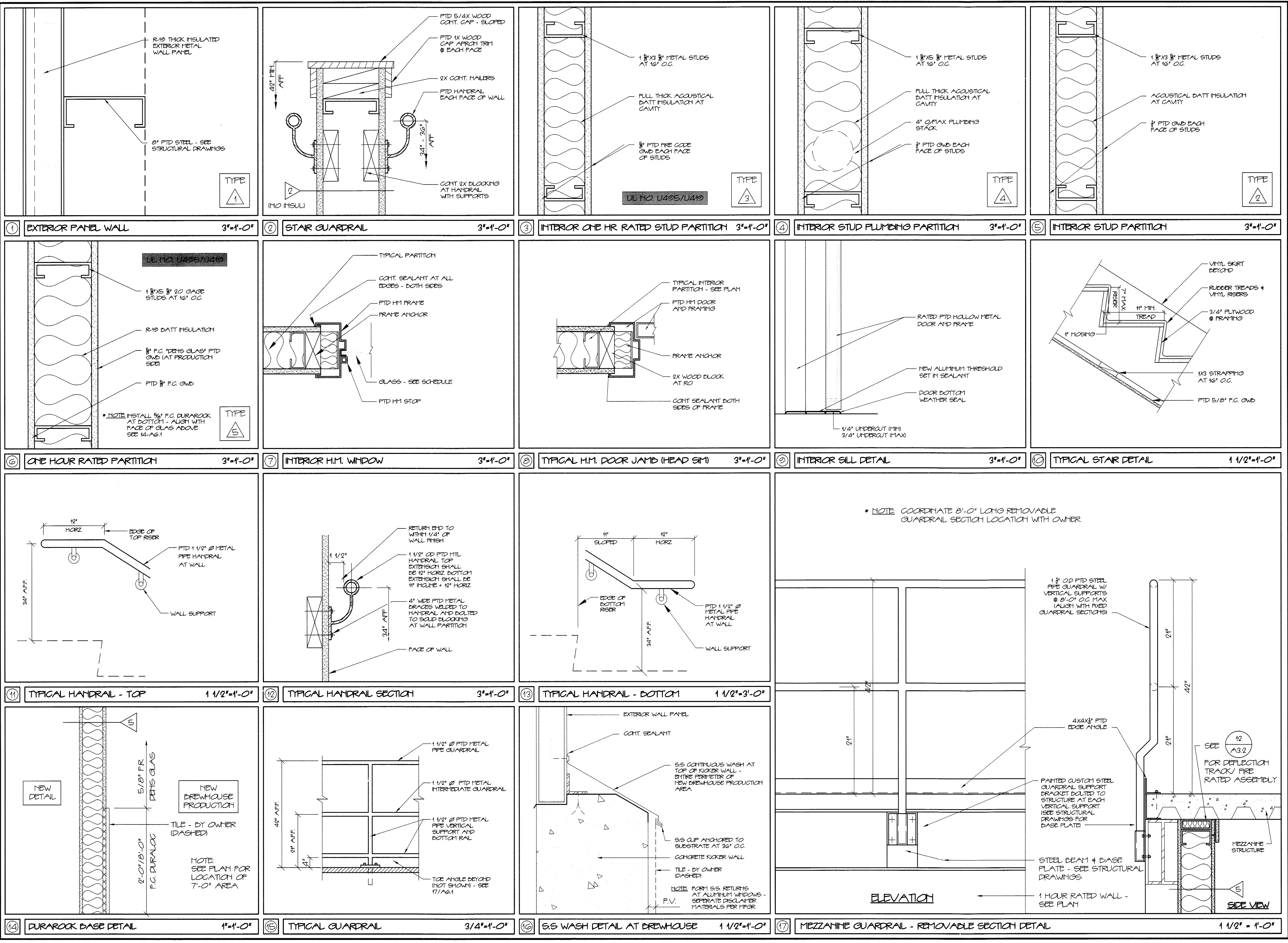
ANTHONY S. HAYES
LICENSED ARCHITECT
MICHAEL F. HAYS
No. 1724
STATE OF MAINE

JOB TITLE

[illegible][illegible]

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|-------------|----------|
| FRAME TYPES | NO SCALE |
|-------------|----------|

G R A N T	H A Y S	A S S O C I A T E S	A R C H I T E C T S	
DOORS & WINDOWS		ARCHITECTURE INTERIOR DESIGN P.O. BOX 6179 FALMOUTH, MAINE 04105		
SCALE AS NOTED		DATE 10 SEPT. 12		
DRAWN BY SAM/MPH		REVISIONS 1 11/1/12 SUPERCEDES PREVIOUS ISSUES		
JOB NO. 120701		NEW ADDITION FOR ALLAGASH BREWING CO. 50 INDUSTRIAL WAY PORTLAND, MAINE		
DRAWING NO. A4.1		JOB TITLE		



ARCHITECTURE
INTERIOR DESIGN
P.O. BOX 6179 FALMOUTH, MAINE 04105
(207) 871-5900
(207) 871-9308

NEW ADDITION FOR
ALAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

REVISIONS

SCALE AS NOTED
DATE 10 SEPT. 12
DRAWN BY MFM/SAM
JOB NO. 120701
DRAWING NO. A6.1

DETAILS

DRAWING TITLE

REGISTERED ARCHITECT
MICHAEL F. HAYS
No. 1724
STATE OF MAINE

REVISIONS

NEW ADDITION FOR
ALAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

REVISIONS

SCALE AS NOTED
DATE 10 SEPT. 12
DRAWN BY MFM/SAM
JOB NO. 120701
DRAWING NO. A6.1

DETAILS

DRAWING TITLE

1 EXPANSION JOINT COVER @ CORNER N.T.S.	2 EXPANSION JOINT COVER AT PANEL WALLS N.T.S.	3 INTERIOR CEILING/WALL EXPANSION JOINT OVER N.T.S.	4 FLOOR EXPANSION JOINT COVER N.T.S.	5 FLOOR EXPANSION JOINT COVER N.T.S.
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20

NEW ADDITION FOR
ALLAGASH BREWING CO.
50 INDUSTRIAL WAY PORTLAND, MAINE

ARCHITECTURE
INTERIOR DESIGN
P.O. BOX 6179 FALMOUTH, MAINE 04105
(207) 871-5900

DETAILS

SCALE AS NOTED
DATE 10 SEPT. 12
DRAWN BY MFH/SAM
JOB NO. 120701
DRAWING NO. A6.2

REVISIONS

120701

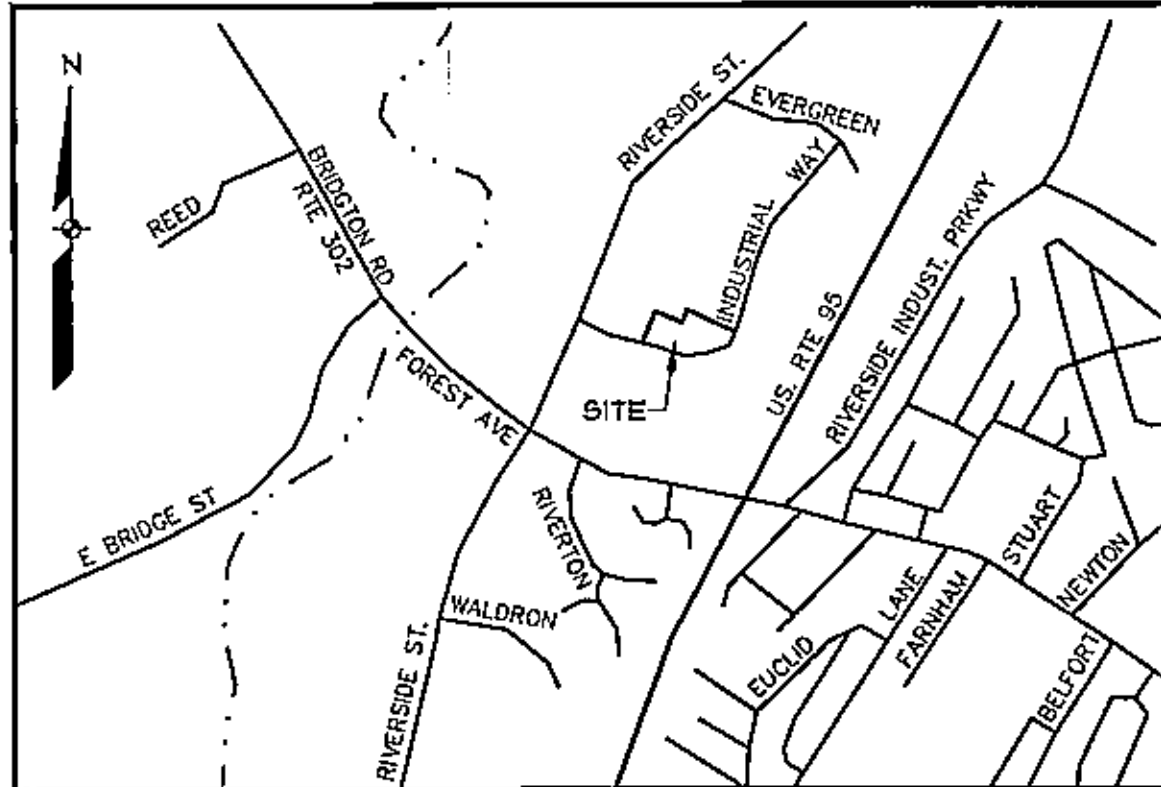
ANTHONY HAYS ASSOCIATES

REGISTERED ARCHITECT
MICHAEL F. HAYS
No. 1724
STATE OF MAINE

50 INDUSTRIAL WAY PORTLAND, MAINE

120701

EXHIBIT D

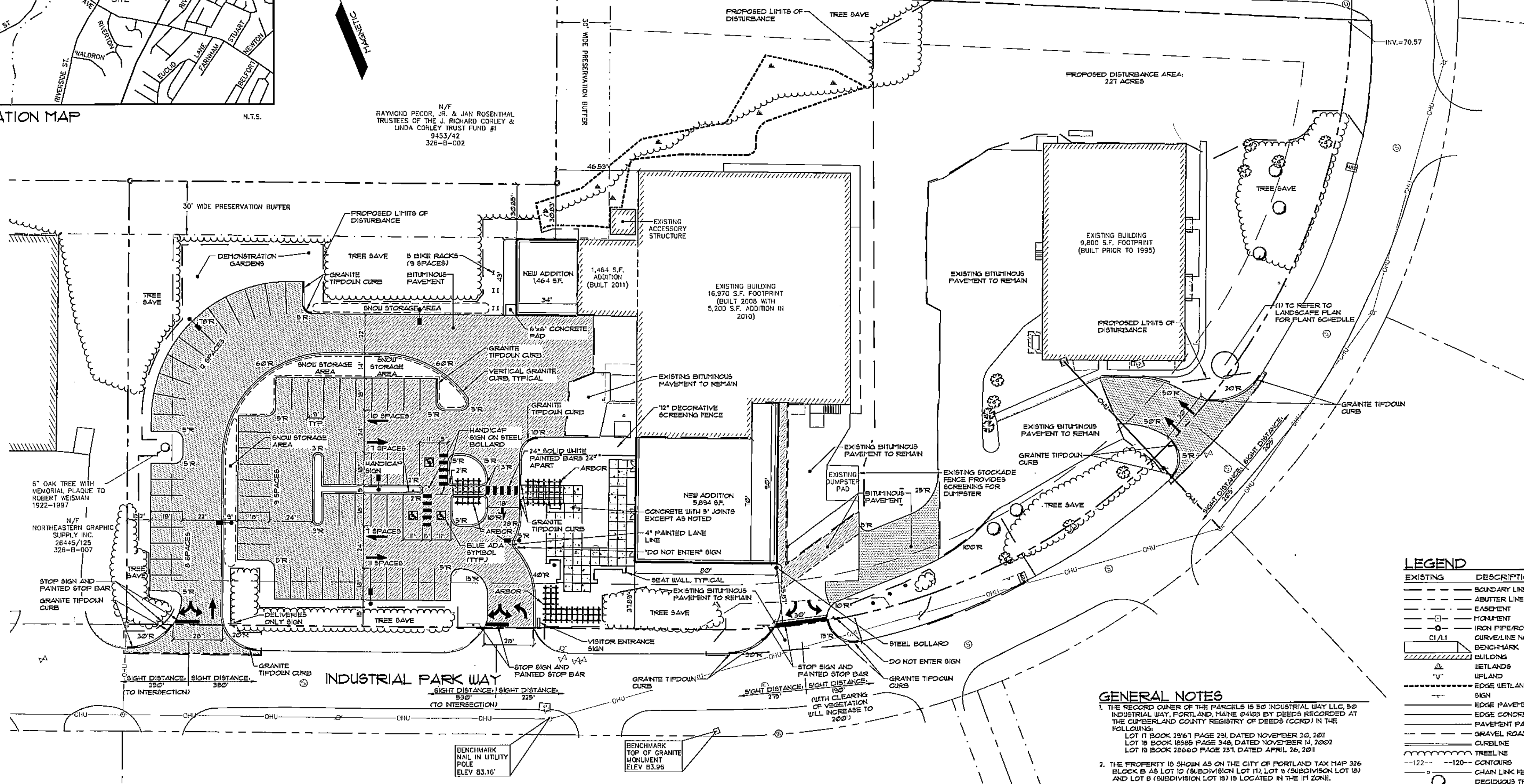


LOCATION MAP

N.T.S.

N/F
RAYMOND PECOR, JR. & JAN ROSENTHAL
TRUSTEES OF THE J. RICHARD CORLEY &
LINDA CORLEY TRUST FUND #1
9453/42
326-B-002

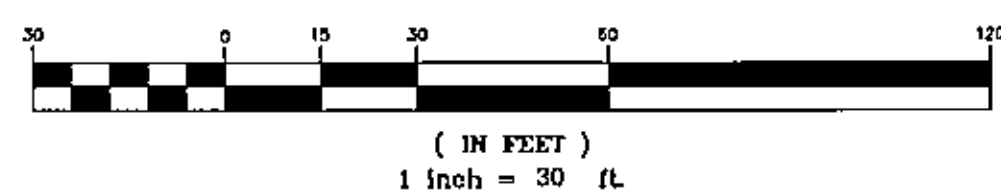
N/F
TURNPIKE PROPERTIES LLC
20405/308
326-B-1



PARKING SUMMARY

50 INDUSTRIAL WAY		
RETAIL	3,230 S.F.	SPACE/100 S.F. (OVER 2,000 S.F.)
OFFICE	1,130 S.F.	SPACE/100 S.F.
PRODUCTION	22,550 S.F.	SPACE/100 S.F.
100 INDUSTRIAL WAY	9,800 S.F.	SPACE/100 S.F.
WAREHOUSE		
TOTAL REQUIRED		43 SPACES
TOTAL PROVIDED		64 SPACES

GRAPHIC SCALE



GENERAL NOTES

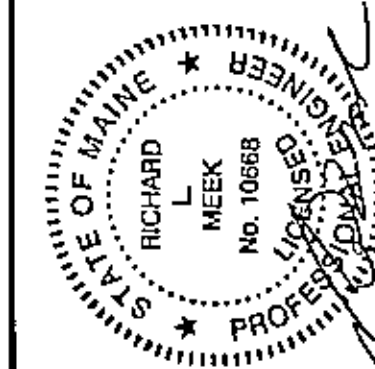
- THE RECORD OWNER OF THE PARCELS IS 50 INDUSTRIAL WAY LLC, 50 INDUSTRIAL WAY, PORTLAND, MAINE 04103 BY DEEDS RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS (CORD) IN THE FOLLOWING:
LOT 11 BOOK 29161 PAGE 291, DATED NOVEMBER 30, 2011
LOT 18 BOOK 18385 PAGE 348, DATED NOVEMBER 14, 2002
LOT 19 BOOK 28660 PAGE 231, DATED APRIL 26, 2011
- THE PROPERTY IS SHOWN AS ON THE CITY OF PORTLAND TAX MAP 326 BLOCK B AS LOT 10 (SUBDIVISION LOT 11), LOT 9 (SUBDIVISION LOT 18) AND LOT 8 (SUBDIVISION LOT 19) IS LOCATED IN THE 1H ZONE.
- SPACE AND BULK CRITERIA FOR THE 1H ZONE ARE AS FOLLOWS:

MIN. LOT SIZE	MAX. IMPERVIOUS RATIO	MAX. BUILDING HEIGHT	MIN. SIDE YARD	MIN. REAR YARD	MIN. FRONT YARD	MIN. STREET FRONTAGE
NONE	15%	15 FEET	25 FEET	25 FEET	1 FT./FT. OF BLDG. HEIGHT	6.0 FEET
PROVIDED	50.1%	34 FEET	30 FEET	30 FEET	35.81 FEET	88.15 FEET
- TOTAL AREA OF PARCELS ARE AS FOLLOWS:

LOT 11	1/2-58,300 SQUARE FEET
LOT 18	1/2-13,073 SQUARE FEET
LOT 19	1/2-59,385 SQUARE FEET
- BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON BOUNDARY, TOPOGRAPHIC AND AS-BUILT SURVEYS PERFORMED BY SEBAGO TECHNIQS, INC. FROM 2002 THROUGH 2011.
- PLAN REFERENCES:
A. RECORDING PLAT OF THE TURNPIKE INDUSTRIAL PARK, BY LAND USE CONSULTANTS, DATED MARCH 28, 1996 AND LAST REVISED SEPTEMBER 9, 1996, BEING RECORDED IN THE CORD IN PLAN BOOK 1ST PAGE 61.
B. SITE PLAN SET OF PLANS OF LOT 18, TURNPIKE INDUSTRIAL PARK FOR ALL AGASH BREWING, BY SEBAGO TECHNIQS, INC. (PROJECT 020571).
- PLAN ORIENTATION IS GRID NORTH, MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE 1802-NAD83. ELEVATIONS DEPICTED HEREON ARE NAVD83, BASED ON DUAL FREQUENCY GPS OBSERVATIONS.
- UTILITY INFORMATION DEPICTED HEREON IS COMPILED USING PHYSICAL EVIDENCE LOCATED IN THE FIELD. UTILITIES DEPICTED HEREON MAY NOT NECESSARILY REPRESENT ALL EXISTING UTILITIES. CONTRACTORS NEED TO CONTACT DIG-SAFE SYSTEMS, INC. (1-800-DIG-SAFE) AND FIELD VERIFY EXISTING UTILITIES PRIOR TO CONSTRUCTION AND/OR EXCAVATION.

LEGEND

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY LINE/ROLL	---
---	ADJUTER LINE/ROLL	---
---	EASEMENT	---
---	MONUMENT	---
---	IRON PIPE/ROD	---
---	CURVE/LINE NO.	---
---	BENCHMARK	---
---	BUILDING	---
---	WETLANDS	---
---	UPLAND	---
---	EDGE WETLAND	---
---	SIGN	---
---	EDGE PAVEMENT	---
---	EDGE CONCRETE	---
---	PAVEMENT PAINT	---
---	GRAVEL ROAD	---
---	CURELINE	---
---	TREELINE	---
---	CONTOURS	---
---	CHAIN LINK FENCE	---
---	DECIDUOUS TREE	---
---	CONIFEROUS TREE	---
---	BOLLARD	---
---	GAS	---
---	GAS GATE VALVE	---
---	GAS PETER	---
---	WATER	---
---	WATER GATE VALVE	---
---	WATER SHUT OFF	---
---	HYDRANT	---
---	WATER MANHOLE	---
---	SEWER	---
---	SEWER MH	---
---	STORM DRAIN	---
---	UNDERDRAIN	---
---	CATCH BASIN	---
---	DRAINAGE PH	---
---	CULVERT	---
---	OVERHEAD UTILITY	---
---	UNDERGROUND UTILITY	---
---	TRANSFORMER PAD	---
---	LIGHT POLE/WALL	---
---	UTILITY POLE	---
---	GUY	---
---	RIPRAP	---



REV.	BY	DATE	STATUS
C	RLM	09/08/12	REVISED PER CONDITIONS OF APPROVAL
B	RLM	08/10/12	REVISED PER CITY REVIEW COMMENTS
A	RLM	07/08/12	PRELIMINARY SITE PLAN SUBMISSION TO CITY
REV.	BY	DATE	STATUS
1	RLM	08/10/12	REVISED PER CONDITIONS OF APPROVAL

SEBAGO
TECHNIQS
INC.
75 John Roberts Rd., Suite 1A
South Portland, ME 04106
Tel. 207-280-5100
Fax 207-280-5100

SITE PLAN
OF:
ALLAGASH BREWING COMPANY
INDUSTRIAL WAY
PORTLAND, MAINE
FOR:
50 INDUSTRIAL WAY, LLC
50 INDUSTRIAL WAY
PORTLAND, MAINE 04103

DATE	SCALE
08/19/12	1" = 30'

EXHIBIT E

QUITCLAIM DEED WITH COVENANT

NORTHEASTERN GRAPHIC SUPPLY, INC., a Maine corporation, for consideration paid, grants to 50 INDUSTRIAL WAY LLC, a Maine limited liability company with an address of 100 Industrial Way, Portland, Maine, 04103, with Quitclaim Covenant, the following described real property:

A certain lot or parcel of land, with any buildings and improvements thereon, situated in on the northerly side of Industrial Way, so-called, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Lot 18 as shown on a Plan entitled Turnpike Industrial Park-Riverside Street, Portland Maine, Recording Plat, made for Portland Venture Partners, 100 Silver Street, Portland, Maine, by Land Use Consultants, dated March 25, 1986, revised through September 9, 1986 and recorded in the Cumberland County Registry of Deeds, in Plan Book 157, Page 61 ("the Subdivision Plan"), to which Subdivision Plan reference is hereby made for a more particular description.

Meaning and intending to convey and hereby conveying the same premises as conveyed to Northeastern Graphic Supply by deed of Alfred H. Milliken, Jr., et als, dated June 2, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8317, Page 51.

Together with an easement to benefit the above described Lot 18, over the parcel of land described hereinafter (the "Easement Area") for ingress and egress by foot and by vehicle, together with the right to construct, improve, maintain, repair, grade, excavate, fill and pave a driveway within the Easement Area for access to Lot 18, and together with the right to install within the Easement Area, both above and below ground, utility services to include, without limitation, facilities necessary or convenient for the transmission of electricity, gas, telephone communications, cable television, computer communications, sewerage and water.

The Easement Area is a fifty (50) foot wide parcel of land, being a portion of Lot 19 as shown on the Subdivision Plan, bound and described as follows:

Beginning on the northerly side of Industrial Park Way, also known as Industrial Way, at the southwesterly corner of Lot 18 as shown on the Subdivision Plan, said point also being the most southerly corner of Lot 19 as shown on the Subdivision Plan;

Thence N 29° 52' 15" E along the westerly sideline of Lot 18 and the easterly sideline of Lot 19 a distance of 90.00 feet;

MAINE REAL ESTATE TAX PAID

No. Received
 Recorded Register of Deeds
 Nov 15, 2002 10:01:56A
 Cumberland County
 Cumberland County
 Cumberland County

Thence N 60° 03' 55" W through land of Northeastern Graphic Supply, Inc., being Lot 19 as aforesaid, a distance of 50.00 feet;

Thence S 29° 52' 15" W through land of Northeastern Graphic Supply, Inc., being Lot 19 as aforesaid, a distance of 90.00 feet to the northerly sideline of Industrial Way;

Thence S 60° 03' 55" E along the northerly sideline of Industrial Way a distance of 50.00 feet to the point of beginning.

The Easement Area consists of approximately 4,500 square feet.

The Grantor herein reserves for itself, its successors and assigns, the right to use the Easement Area in common with the Grantee for all purposes, including but not limited to, ingress and egress by foot and vehicle and the right to install and/or connect to all utilities located within the Easement Area, all of which reserved rights shall benefit the Grantor's adjoining property.

IN WITNESS WHEREOF, Northeastern Graphic Supply, Inc. has caused this instrument to be executed by Brian Kroot, its president this 14th day of November, 2002.

WITNESS

NORTHEASTERN GRAPHIC
 SUPPLY, INC.

Catherine E. Decker

By:

Brian Kroot

Its: President

State of Maine

County of Cumberland

November 14, 2002

Personally appeared before me the above named Brian Kroot, president of Northeastern Graphic Supply, Inc. and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of Northeastern Graphic Supply, Inc.

Catherine E. Decker
 Notary Public/Attorney at Law

Print Name CATHERINE E. DECKER

My Commission Expires N/A

QUITCLAIM DEED
With Covenant

THAT, 100 INDUSTRIAL WAY, LLC, a Maine Limited Liability Company with an office in Portland, County of Cumberland, State of Maine (Grantor) in consideration of one dollar and other valuable consideration paid by 50 INDUSTRIAL WAY LLC, a Maine Limited Liability Company with an office in Portland, County of Cumberland, State of Maine whose mailing address is 50 Industrial Way, Portland, Maine 04103 (Grantee), the receipt whereof Grantor does hereby acknowledge, does hereby remise, release, bargain, sell and convey and forever quitclaim unto the said 50 Industrial Way LLC, its successors and assigns forever, the following described real estate:

A certain lot or parcel of land, together with the buildings and improvements thereon, situated on the northerly side of Industrial Way, so-called, in the City of Portland, County of Cumberland and State of Maine, and described as follows:

Lot 17 as shown on a Plan of Turnpike Industrial Park made for Portland Venture Partners by Land Use Consultants (Jeffrey H. McAllister, Registered Land Surveyor No. 1263), dated March 25, 1986 and recorded September 17, 1986 in the Cumberland County Registry of Deeds in Plan Book 157, page 61, to which Plan reference is hereby made for a more particular description.

Being the same premises conveyed to the Grantor herein by deed from Bruce E. Milliken dated August 29, 2006 and recorded in the Cumberland County Registry of Deeds in Book 24314, Page 237.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging to the said 50 Industrial Way LLC, its successors and assigns forever.

AND Grantor does covenant with the said Grantee, its successors and assigns, that Grantor shall and will warrant and defend the premises to the said Grantee, its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under Grantor.

IN WITNESS WHEREOF, Peter Colesworthy, Manager of 100 Industrial Way, LLC have hereunto set my hand and seal in my said capacity this 30th day of November, 2011.

Witness

100 INDUSTRIAL WAY, LLC

By: Peter Colesworthy
Peter Colesworthy, Its Manager

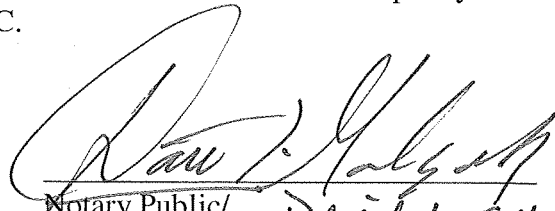
MAINE REAL ESTATE TAX PAID

State of Maine
Cumberland, ss.

November 30, 2011

Personally appeared Peter Colesworthy, Manager of 100 Industrial Way, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said 100 Industrial Way, LLC.

Before me,


Notary Public/
Attorney at Law *David L. Galtay Jr.*
Bar # 003643

Received
Recorded Register of Deeds
Dec 01, 2011 11:31:38A
Cumberland County
Pamela E. Lovley

COMMERCIAL LEASE AGREEMENT

This Lease is entered into this 1st Day of November, 2010, by and between 50 INDUSTRIAL WAY LLC, a Maine limited liability company of Portland, Maine, having a mailing address of 50 Industrial Way, Portland Maine 04103 (the "Landlord"), and ALLAGASH BREWING COMPANY, a Maine corporation having a place of business in Portland, Maine and a mailing address of 50 Industrial Way, Portland Maine 04102 (the "Tenant").

WITNESSETH:

ARTICLE I. PREMISES In consideration of the rent and covenants herein reserved and contained on the part of the parties to be paid, performed, and observed, the Landlord does hereby lease unto the Tenant, and the Tenant does hereby take and hire from the Landlord, upon and subject to the terms and provisions of this Lease, the property located at or near 50 Industrial Way in the City of Portland, County of Cumberland and State of Maine, and being more particularly described and set forth on Exhibit A attached hereto (the "Premises").

ARTICLE II. TERM: OPTION TO RENEW. (a) To have and to hold the Premises for a term of five (5) years beginning on November 1, 2010 (the "commencement date") and ending on October 31, 2015 at 11:59 p.m. (the "initial term").

(b) The Landlord hereby grants and gives to the Tenant the privilege of three (3) successive extensions of this Lease at the Tenant's election, for periods of five (5) years each, commencing upon the termination of the initial term or extension term, as applicable, of this Lease. The Tenant shall exercise its election to extend by notifying the Landlord in writing at least one hundred eighty (180) days in advance of the commencement date of the applicable extension term period (the "extension term"). The five-year extension term periods shall be subject to the same terms and conditions as the initial term hereof (all references in this Lease to the "term" shall mean the initial term and/or the extension term, as applicable). Except that the rent shall be adjusted in the manner set forth in Article III of this Lease. No holding over as a tenant-at-will shall be construed by either of the parties as an exercise and/or acknowledgement of the holding under the extension term period (or waiver of written notice thereof) unless and except the actual exercise of such extension thereafter be acknowledged in writing by the Tenant.

ARTICLE III. RENT. (a) The Tenant covenants and agrees to pay to the Landlord at the address of the Landlord set forth hereinabove or at such other place as the Landlord may by notice in writing from time to time direct, annual rent in the amount of Two Hundred Forty-Seven Thousand, Two Hundred Dollars (\$247,200.00), payable in 12 equal monthly installments of Twenty Thousand, Six Hundred Dollars Per Month (\$20,600.00), payable in advance without demand, offset or deduction, on the first day of each and every calendar month during the initial term of this Lease and prorated for the fraction of any month, except that on the first rent day, the Tenant shall also pay rent at said rate for any portion of the preceding calendar month included

in the term of this Lease. In the event the Tenant elects to extend the term pursuant to Article II (b) above, the Tenant shall pay base rent as aforesaid at an annual rate equal to the then current market rate agreed to by the Landlord and the Tenant but in no event less than the base rent for the last year of the previous five (5) year term. Subject to the foregoing, in the event the Landlord and the Tenant do not agree to the annual rent for the applicable extension term at least one hundred twenty (120) days prior to commencement of such extension term, then the annual amount of base rent shall be equal to the annual base rent in effect during the previous five (5) year period increased by the rate of inflation for the preceding sixty (60) month period beginning with the commencement date, as measured by the CPI. The "CPI" means the Consumer Price Index for All Urban Consumers (1982-84=100) for Boston, Massachusetts, All Items as issued by the Bureau of Labor Statistics of the United States Department of Labor.

(b) It is the intent of this Lease that the base rent be absolutely net to the Landlord and that the Tenant pay all costs and expenses associated with the Premises, of whatever kind or nature, during the term of this Lease, including, without limitation, all taxes, assessments and utilities relating to the Premises. The Tenant agrees that interest shall accrue on any overdue rent and other charges payable by the Tenant to the Landlord under this Lease at the rate of eighteen percent (18%) per annum.

ARTICLE IV. CONDITION OF PREMISES. The Tenant acknowledges that it has inspected the Premises prior to its occupation thereof, is satisfied with their condition and accepts them in "as is" condition. The Landlord shall have no obligation to perform any improvements to the Premises during the term of this Lease.

ARTICLE VI. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. The Tenant shall make no alterations, additions or improvements in or to the Premises without the Landlord's prior written consent except for brewery and warehouse fit-up in connection with the normal business operations associated with the use described in Article V above.

ARTICLE VII. TENANT'S FIXTURES. All operating equipment and trade fixtures installed by the Tenant in the Premises shall be, and remain, the property of the Tenant and may be removed at any time during or at the expiration of the term of this Lease; provided, however, that the Tenant shall, at or before the expiration of the term of this Lease, remove said operating equipment and trade fixtures and in the case of damage by reason of such removal, restore the Premises to substantially the same order and condition as existed at the beginning of the term of this Lease; and provided further that all plumbing, electrical, wiring, water, sewer, heating, ventilating, and air conditioning equipment and systems, and other permanent improvements, whether or not installed by the Tenant, shall be and remain the property of the Landlord and may not be removed by the Tenant.

ARTICLE VIII. TAXES, UTILITIES. (a) The Tenant shall during the term hereof pay to the Landlord, as an additional charge, all of the real estate taxes imposed or levied against the Premises for each tax year or portion thereof during the term of this Lease. The payment for each tax year or portion thereof shall be made to the Landlord within ten (10) days after the tenant shall have received from the Landlord a copy of the Landlord's tax bill. Upon receipt of such payment, the Landlord shall pay the taxes due to the taxing authority if they have not

already been paid. The expression "real estate taxes" used herein shall mean all ad valorem taxes imposed or assessed by any public authority having jurisdiction, which upon assessment or upon failure of payment become a lien upon the Premises (including personal property), and shall include betterment assessments assessed upon the Premises during the term, but shall exclude all income taxes, excess profits taxes, franchise taxes, and estate, succession, and inheritance taxes.

The Tenant shall also pay one hundred percent (100%) of all taxes upon its signs, equipment and other personal property in or upon the Premises. Real estate taxes imposed or levied against the Premises for the tax years which include the commencement date or termination date of the term of this Lease. Shall be apportioned pro rata between the Landlord and the Tenant on the basis of the portions of such tax years occurring after the commencement date or prior to the termination date of the term of this Lease. The Landlord agrees that the Tenant shall have the right to contest the amount or legality of any real estate or other ad valorem or personal property taxes, or other taxes or charges which the Tenant is obligated to pay and make application for the reduction thereof, or of any assessment upon which the same may be based, and the Landlord agrees at the request of the Tenant to execute or join in the execution of any instruments or documents necessary in connection with such contests or application, all at the Tenant's expense.

(b) The Tenant shall pay all costs and expenses for gas, electricity, heat, oil, and other fuels or utilities, including water and/or sewer charges, and all other utilities furnished to or used in connection with the Premises for any purposes whatsoever during the term of this Lease, promptly as each thereof shall become due and payable.

(c) The Tenant's obligation to pay real estate taxes accrued during the term and to pay for all utilities used at the Premises during the term shall survive the expiration or termination of this Lease.

ARTICLE IX. REPAIRS AND MAINTENANCE. The Tenant shall, at its own cost and expense, keep and maintain the entire Premises, including the equipment and the buildings and improvements situated thereon, in good order, condition and repair throughout the term of this Lease. Without limiting the foregoing, the Tenant shall keep such buildings weather-tight, shall maintain in good order and condition and repair the walls, structural frame, foundation, roofing, downspouts and gutters thereof, the storm waterlines, plumbing, sewage, heating, electrical, gas and air conditioning or any other utility or drainage systems within or servicing the Premises or the buildings thereon and any paved areas, equipment, sprinkler systems, exterior lights or signs on the Premises (including snow and ice removal in a timely manner), and shall make all necessary repairs, alterations, and improvements whether ordinary, extraordinary, foreseen or unforeseen, including any which may be required by any laws, ordinances, orders or regulations or any public authority having jurisdiction over the Premises or the Tenant's use and occupation thereof, including, without limitation, those relating to the accessibility and usability of the accommodations, facilities and services located on the Premises and in the buildings thereon, and including, without limitation, any repair, alteration or improvement required after the commencement date. Before making any structural or nonstructural alterations, additions or improvements to the Premises or the buildings thereon, including any required by this article IX, the Tenant shall obtain the prior written consent of the Landlord based on detailed plans and

specifications to be submitted to the Landlord for approval; provided however that the Tenant may, from time to time at its expense, redecorate the Premises with obtaining such consent. All renovations, alterations, additions and improvements shall be done in a good and workmanlike manner. The Landlord shall have no maintenance or repair obligations for the Premises during the term of this Lease, including without limitation any obligation to maintain or repair the walls, structural frame, foundation, roof, plumbing, sewage, heating, electrical, or other utility or drainage systems or to make any capital expenditures whatsoever.

ARTICLE X. SUBLETTING AND ASSIGNMENT. The Tenant shall not assign this Lease, nor sublet the Premises in whole or in part, without the prior written consent of the Landlord and shall not permit the Tenant's interest in this Lease to be bested in any other party by operation of law or otherwise. Notwithstanding any assignment of this Lease or subletting of the Premises, the Tenant shall remain directly and primarily liable under this Lease.

ARTICLE XI. INSURANCE; DAMAGE AND DESTRUCTION. (a) During the term of this Lease, the Tenant, at its sole cost and expense shall keep the buildings and improvements upon the Premises (including the equipment and the personal property) insured against loss or damage by fire or any of the other casualties under a so-called "all risk" policy in an amount at least equal to the replacement cost thereof, exclusive of excavation, foundations, and floorings and with demolition cost and additional cost of construction endorsements. The Tenant shall, upon request of the Landlord, deposit with the Landlord certificates of such insurance on or before the commencement date, and such policies shall name the Landlord as additional insured. Each policy of such insurance shall name as the insured thereunder the Landlord and the Tenant, and all such certificates shall require the respective insurers to give thirty (30) days prior written notice to the Landlord prior to any cancellation or reduction of coverage. All insurance proceeds recovered on account of any destruction or damage to the buildings and improvements upon the Premises shall be paid to the Landlord and shall thereafter, subject to the escrow procedure described below, be disbursed to the Tenant by the Landlord to be applied to the cost of repair and restoration of the Premises as provided in this article XI; provided, however that in the event that this Lease shall be terminated by reason of any fire or casualty, the insurance proceeds shall be retained by the Landlord. If this Lease shall not be terminated following any casualty and if the insurance proceeds shall be less than Twenty-Five Thousand Dollars (\$25,000.00), the same shall be paid over to the Tenant to be applied to repair and restoration as aforesaid, provided that if such insurance proceeds shall be in excess of said amount, the same shall be held by the Landlord and disbursed to the Tenant as the work of repair and restoration progresses, upon certificates of the architect or engineer supervising such work that the disbursements then sought, plus all prior disbursements, do not exceed the costs of such work completed to the date of such certificate and the balance is sufficient to pay for the estimated cost of completing such work. The Tenant further agrees at all times during the term of this Lease, at its sole cost and expense, to carry and pay for rental value insurance (covering loss or damage by fire with extended coverage) in an amount equal to at least the base rent value for one (1) year, plus, for one (1) year, the reasonably estimated real estate taxes, assessments, and other charges attributable to the Premises. The policy shall be written in favor of the Landlord and the Tenant, as their interest may appear, but with loss payable to the Landlord. The original policy shall be delivered to the landlord, and not later than ten (10) days prior to its expiration, the Tenant shall deliver renewal

policies together with due proof of payment of premiums thereon. In the event of damage or destruction of the Premises by as risk comprehended within the policy, the proceeds of the rental value insurance paid to the Landlord shall be held by the Landlord as security for the payment of the rental, additional charges, and other charges due for the period of time for which the loss was paid.

(b) In the event the whole or any part of the buildings and improvements upon the Premises shall be destroyed or damaged by fire or other casualty after the date of execution hereof to the extent the restoration of the premises and the buildings and improvements thereon to substantially the condition in which they were immediately prior to such destruction and damage is not possible, as reasonably estimated, within ninety (90) days following such destruction or damage, then this Lease may be terminated and ended at the election of either the Landlord or the Tenant (and in the case of termination by the Tenant, provided that notice in writing of such election shall be sent to the Landlord within thirty (30) days after such destruction or damage as aforesaid). Upon termination as aforesaid, this Lease and the term hereof shall cease and come to an end; provided however that the Tenant shall be permitted a reasonable period of time thereafter to remove its property. If such destruction or damage to the Premises is such that neither the Landlord nor the Tenant shall have the right to terminate this Lease, or in the event that having such right, neither shall elect to terminate this Agreement as aforesaid within the time provided, the Tenant shall proceed to repair and restore the Premises and the buildings and improvement thereon to substantially their condition prior to such damage or destruction.

(c) The Landlord and the Tenant each releases the other and the trustees, directors, officers, employees and representatives of the other, from any liability or responsibility (to the other or anyone claiming through or under them by subrogation or otherwise) for any damage caused by fire or other insured casualty to the extent of any insurance recovery even if such fire or casualty shall have been caused by the fault or negligence of the other party or anyone for whom the other party is responsible, provided that if the releaser shall carry insurance upon its property, this release shall be in force and effect only with respect to damage occurring during such time as the releaser's policies of fire and casualty insurance shall contain a clause to the effect that said release shall not affect said policies or the right of the releaser to recover thereunder. The Landlord and the Tenant each agrees that its fire and casualty insurance policies shall include such a clause so long as the same is obtainable and is includable at nominal or no extra cost. If extra cost is chargeable therefore, each party shall advise the other thereof and of the amount of the extra cost and the other party, at its election, may pay the same but shall not be obligated to do so.

ARTICLE XII. INDEMNITY AND PUBLIC LIABILITY INSURANCE. (a) The Tenant shall, from and after the date of execution of this Lease, defend, indemnify and hold harmless the Landlord (together with affiliates and officers, directors, managers, members, employees and agents of the Landlord and its affiliates) from and against all loss, liability, damages, claims, proceedings, costs (including costs of defense and attorneys' and professionals' fees incurred in defense or incurred in enforcement of this indemnity), expenses, demands, suits, and causes of action (all of the foregoing collectively referred to as "Liabilities") arising out of damage to any property or death or injury to any person sustained on the Premises, or arising

(directly or indirectly) out of or in connection with the possession, use, occupation or control of the Premises, and from and against all Liabilities arising out of damage to any property or death or injury to any person anywhere occasioned, or claimed to have been occasioned, by any act, neglect or default of, or work performed by, the Tenant, its agents, employees, licensees or contractors. In claims against any person or entity indemnified under this Article by an employee of the Tenant, its licensee or contractor, anyone directly or indirectly employed by them, or attributable for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Tenant or its licensee or contractor under workers' or workmen's compensation acts, disability benefit acts or other employees benefit acts, and solely for purposes of this indemnity the Tenant hereby waives any immunity or any such limitation provided by any such act. This Article shall survive the expiration or termination of this Lease.

(b) In addition to the foregoing indemnity, the Tenant shall maintain with respect to the Premises public liability insurance having a combined single limit coverage of not less than Three Million Dollars (\$3,000,000.00) for injury to, or death of, one or more persons in a single accident of occurrence, and property damage insurance in an amount not less than One Million Dollars (\$1,000,000.00) in companies qualified to do business in the State of Maine under a policy or policies insuring the Landlord, the Tenant and any designee of the Landlord against injury to persons or damage to property as herein provided, all of said policies to be written on an occurrence basis, and to contain a clause to the effect that such policies and the coverage evidenced thereby shall be primary with respect to any policies carried by the Landlord, and that any coverage carried by the Landlord shall be excess insurance. In no event shall the limits of said policies be considered as limiting the liability of the Tenant under this Lease.

(c) The Tenant shall, upon request of the Landlord, deposit with the Landlord, certificates of such insurance at or prior to the commencement of the term of this Lease, and thereafter within ten (10) days prior to the expiration of such policies. Such policies shall, to the extent obtainable, provide that the policies may not be cancelled without at least ten (10) days prior written notice to each insured.

ARTICLE XIII. INSPECTION OF PREMISES. The Landlord and its agents and representatives shall have the right to enter into or upon the Premises or any part thereof at all reasonable hours for the purpose of examining the same or performing work permitted to be performed by the Landlord by the terms hereof, or for the purpose of showing said Premises to prospective purchasers, mortgagees or lessees, provided such entry shall not unreasonably interrupt the business of the Tenant or cause damage to the Tenant's property.

ARTICLE XIV. SUBORDINATION. The Tenant shall, at the request of the Landlord, subordinate this Lease to the lie of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part irrespective of the time of execution or the time of recording any such mortgage or mortgages, and the Tenant agrees, at the request of the Landlord, to execute and documents which may be requested by a prospective mortgagee acknowledging such subordination; provided, however, that any such documents shall provide that in the event such mortgagee shall foreclose its mortgage or otherwise succeed to the interest of the Landlord in the Premises, such mortgagee shall recognize this Lease and the Tenant's right

hereunder, subject to the provisions of this Lease concerning the Tenant's defaults, and the Tenant shall recognize and attorn to such holder, its successors and assigns, as the Landlord hereunder.

ARTICLE XV. SIGNS. The Tenant shall not place, install or maintain any sign, symbol, advertisement of similar device, visible to public view from outside the Premises without first obtaining the Landlord's approval as to the size, location, design and appearance thereof. Any sign erected by the Tenant shall be created at the Tenant's expense and in conformity with applicable laws and ordinances.

ARTICLE XVI. TENANT'S COVENANTS. The Tenant covenants and agrees as follows: (a) to pay when due the said rent at the times and in the manner aforesaid, together with interest at the rate of eighteen percent (18%) per annum on any installment of rent which is more than five (5) days overdue; (b) to procure any licenses and permits required for any use made of the Premises by the Tenant; (c) to store all trash and garbage in appropriate containers; (d) not to make any use of the Premises which is improper, offensive or contrary to any law or ordinance, nor to permit any act or thing to be done on the Premises which shall constitute a nuisance or which may make void or void able any insurance on the Premises; (e) to comply, at the Tenant's cost and expense, with all present or future laws, codes, ordinances, rules and regulations of any governmental body or agency having jurisdiction over the Premises or the Tenant's use thereof; (f) to promptly pay when due the entire cost of any work to the Premises undertaken by the Tenant so that the Premises shall at all time be free of liens for labor and materials, to do all of such work in a good and workmanlike manner, employing material of good quality and complying with all applicable building codes and other governmental requirements; and to defend the Landlord and save the Landlord harmless and indemnified from injury, loss, liability, claims or damage to any person or property occasioned by or arising out of such work; (g) not to burn any trash on or near the Premises or to cause any offensive odors to be emitted from the Premises; (h) not to permit or cause to be used on the Premises any device such as a Public Address System or any excessively bright lights which change, flash or flicker, or any similar devices, the effect of which shall be visible or audible from outside the Premises; and (i) to pay all costs and expenses incurred by the Landlord in enforcing the provisions of this Lease in the event of any breach or default by the Tenant, including reasonable attorneys' fees.

ARTICLE XVII. DEFAULT. This Lease is made on the condition that if the Tenant shall fail to pay any installment of rent within ten (10) days after the same shall be due and payable, or if the Tenant shall neglect or fail to perform or observe any of the terms, provisions, conditions, and covenants herein contained, and on the Tenant's part to be performed, or observed for a period of thirty (30) days after the Landlord shall have given the Tenant notice of such neglect or failure, or if 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 the Tenant's property, which appointment is not stayed or terminated within sixty (60) days, or if the Tenant commits any act of bankruptcy, or if a petition is filed by the Tenant under any bankruptcy or insolvency law, and the same shall not be dismissed within sixty (60) days from the date upon which it is filed, then, and in any of said cases, the Landlord lawfully may immediately, or at any time thereafter, and without demand or notice or the necessity of compliance with any statute in any manner relating to the summary process, enter upon the

Premises and repossess the same and expel the Tenant and those claiming through or under the Tenant and remove its effects, forcibly if necessary, without being deemed guilty of any manner of trespass and without prejudice to any rights or remedies which might otherwise be used for arrears of rent or previous breach of covenant, and upon such entry, all rights of the Tenant under this Lease shall terminate; and the Tenant covenants that in case of such termination, the Tenant shall forthwith pay to the Landlord, as damages, a sum equal to the amount by which the discounted present value of the rent for the term of this Lease exceeds the fair rental value of the Premises for the remainder of the term of this Lease, and, in addition thereto, will, during the remainder of the term of this Lease, pay to the Landlord on the last day of each calendar month the difference, if any, between the rental which would have been due for such month had there been no such termination and the sum of the then future value of the amount being received by the Landlord as rent from occupants of the Premises, if any, and the applicable pr-rated amount of the damages previously paid to the Landlord. The Tenant shall also remain liable for all unpaid rent accrued prior to the date of termination.

The Tenant shall also pay to the landlord such reasonable expenses as the Landlord may incur in connection with re-letting, including but not by way of limitation, legal expenses, attorneys' fees, brokerage and advertising costs, and expenses for keeping the Premises in good order or for preparing same for re-letting.

No remedy herein or otherwise conferred upon or reserved to the Landlord or the Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate, and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity, and every power and remedy given by this Lease may be exercised from time to time as often as occasion may arise or as may be deemed expedient. No delay or omission of the Landlord or the Tenant to exercise any right or power arising from any default on the part of the Tenant or the Landlord, as the case may be, shall impair any such right or power, or shall be construed to be a waiver of any such default by the Tenant hereunder, shall not constitute a waiver of such default. No termination of this Lease, prior to the normal ending thereof, by lapse of time or otherwise, shall affect the Landlord's right to collect rent for the period prior to the termination thereof.

ARTICLE XVIII. WAIVERS. The receipt of rent by the Landlord, with knowledge of any breach of this Lease by the Tenant or of any default on the part of the Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. Failure of either party to complain of any act or omission on the part of the other party no matter how long the same may continue shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implies, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by the Tenant shall require the consent or approval of the Landlord, the Landlord's consent to, or approval of, such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

ARTICLE XIX. NOTICES. All notices and other communications authorized or required hereunder shall be in writing and shall be deemed given when mailed by certified mail, return receipt requested, with postage prepaid, addressed to the party for whom it is intended at the address set forth above, or at such other address or addresses as either party may hereafter designate by notice to the other.

ARTICLE XX. INVALIDITY OF PARTICULAR PROVISIONS. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be in force to the fullest extent permitted by law.

ARTICLE XXI. PARTIES. Any pronoun used herein shall be read in the singular or plural number and in such gender as the context may require. Except as otherwise provided in this Lease, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns, respectively of the Landlord and the Tenant. The word "Landlord" as used herein shall mean only the owner for the time being of the Landlord's interest in this Lease and such owner and each succeeding owner shall be liable hereunder only during the period of its respective ownership. It is agreed that the Landlord hereunder, or any person having a beneficial interest in the Premises, shall not be personally liable under this Agreement in any way whatsoever to the Tenant beyond its or their interest in the Premises, and the Tenant shall be entitled to look only to the Premises, including any insurance proceeds there from, for collection of any judgment for money damages against Landlord. Furthermore, if the Landlord or any successor in interest of the Landlord shall be a mortgagee in possession, or an individual, joint venture, trust, tenancy in common, corporation, limited liability company or partnership, general or limited, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee in possession, or such individual or on the part of the stockholders of such corporation or the members of such partnership, joint venture or limited liability company or the beneficiaries of such trust with respect to any of the terms, covenants and conditions of this Lease, and the Tenant shall look solely to the equity of the Landlord, or such successor in interest in the estate of the Landlord in the Premises, including insurance proceeds, for the satisfaction of each and every remedy of the Tenant in the event of any breach by the Landlord, or by such successor in interest, of any of the terms, covenants and conditions of this Lease to be performed by the Landlord; such exculpation of personal liability to be absolute and without any exception whatsoever. The foregoing shall not prohibit the Tenant from bringing any action for specific performance or for injunctive relief.

ARTICLE XXII. SELF-HELP. If the Tenant shall default in the performance of observance of any agreement, condition or other provision in this Lease contained on its part to be performed or observed, and shall not cure such default within fifteen (15) days after notice in writing from the Landlord specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), the Landlord may, at its option, without waiving any claims for breach of agreement, at any time thereafter cure such default for the account of the Tenant and the Tenant shall

reimburse the Landlord for any amount paid and any expense or contractual liability so incurred, and any amounts due hereunder from the Tenant shall be deemed additional rent due and payable with the next installment of rent; provided, however, that the Landlord may cure any such default as aforesaid prior to the expiration of said waiting period, but after notice to the Tenant, if it is necessary to protect the Premises if its interest therein, or to prevent injury or damage to persons or property.

ARTICLE XXIII. FORCE MAJEURE. In any case where either party hereto is required to do any act (except for the payment of rent or other sums by the Tenant), the time for the performance thereof shall be extended by a period equal to any delay caused by or resulting from an act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, or delays caused by either party to the other whether such time be designated by a fixed date, a fixed time, or a "reasonable time".

ARTICLE XXIV. EMINENT DOMAIN. (a) If the entire Premises is taken by any public authority under the power of eminent domain or taken in any manner for any public or quasi-public use or conveyed in lieu of such taking, or in any portion of the Premises is so taken or conveyed so as to render the Premises permanently unusable by the Tenant for the purposes intended, then the term of this Lease shall cease as of the day possession shall be taken by such public authority or the date of the conveyance, and the rent and other sums payable hereunder shall be duly apportioned as of the date of such taking or conveyance. All damages awarded for the value of the Premises shall belong to and be the property of the Landlord; provided, however, that the Tenant shall be entitled to any portion of the award attributable to any capital improvements, additions, modification or replacements constructed or installed by the Tenant at the Tenant's cost.

(b) If only a portion of the Premises is taken by any public authority under power of eminent domain or taken in any manner for any public or quasi-public use or conveyed in lieu thereof and this Lease is not terminated pursuant to article XXIV, paragraph (a), this Lease shall continue in full force and effect and the Landlord shall make an equitable adjustment of the rent payable by the Tenant.

ARTICLE XXV. HOLDING OVER. In the event that the Tenant shall continue in occupancy of the Premises after the expiration of the term of this Lease, such occupancy shall not be deemed to extend or renew the term of this Lease, but, at the option of the Landlord, such occupancy shall continue as a tenancy at will from month to month upon the covenants, provisions, and conditions herein contained and at twice the rental in effect during the term of this Lease, prorated and payable for the period of such occupancy. This Article shall not be construed as giving the Tenant any right to hold over after the expiration of the term of this Lease.

ARTICLE XXVI. EXONERATION OF LANDLORD. The Tenant agrees that the Landlord shall not be liable to the Tenant of anyone claiming under the Tenant for any damage to property or injury (including death to any person on or near the Premises that has been occasioned by or through (i) the failure of the water supply or of any other utility servicing the premises; (ii) the action, whether direct or indirect, of the elements; (iii) malicious mischief or

vandalism; or (iv) any other cause whatsoever unless the same shall be caused by or result from the affirmative acts or gross negligence of the Landlord.

ARTICLE XXVII. CAPTIONS. The captions are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Lease nor the intent of any provision hereof.

ARTICLE XXVIII. LANDLORD'S RIGHT TO SELL. The Landlord shall have the right to sell, assign, transfer or otherwise alienate its interest in the Premises. Upon such sale, assignment, transfer or alienation, the new owner shall succeed to all of the Landlord's obligations hereunder. In exchange for such new owner's written assumption of this Lease, the Tenant shall be bound to the new owner to the same extent as it was bound to the Landlord. At such time, upon written assumption of this Lease by the new owner, the Landlord hereunder shall be entirely freed and relieved of any obligation or responsibility under this Lease first arising after the date of such assumption.

ARTICLE XXIX. LEASE NOT TO BE RECORDED. The Landlord and the Tenant agree that this Lease shall not be recorded. Upon execution of this Lease, the Landlord shall execute and deliver to the Tenant a Memorandum of Lease in recordable form, which may be recorded by the Tenant at the Tenant's expense.

ARTICLE XXX. QUIET ENJOYMENT. Upon payment by the Tenant of the rent and other sums reserved in this Lease and provided to be paid by the Tenant and upon the observance and performance by the Tenant of all of the covenants, agreements, terms and conditions of this Lease on the Tenant's part to be observed and performed, the Tenant shall peaceably and quietly hold and enjoy the Premises for the term of this Lease without hindrance or interruption.

ARTICLE XXXI. NO BROKERS. The Landlord and the Tenant agree that no brokers have been involved in this Lease, and each agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses that either party may suffer as a result of claims made or suits brought by any broker in connection with this Lease and the transactions contemplated hereby, the obligated party hereunder to be the party whose conduct gives rise to such claim.

ARTICLE XXXIII. HAZARDOUS MATERIALS. (a) Without limiting the requirements contained elsewhere in this Lease, the Tenant shall, from and after the commencement date, with respect to any Hazardous Materials affecting the Premises (i) identify and handle all Hazardous Materials on, from or affecting the Premises in accordance with all applicable federal, state and local laws, regulations, rules, ordinances and policies and in accordance with the orders and directives of all federal, state and local governmental authorities, and (ii) defend, indemnify and hold harmless the Landlord and its affiliates, and the employees, agents, officers and directors of any of them, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (1) the presence, disposal, release or threatened release of any Hazardous

Materials which are on, from, or affecting the Premises; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials on, from or affecting the Premises; (e) any lawsuit brought or threatened, settlement reached or government order relating to Hazardous Materials on, from or affecting the Premises, and/or (4) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Landlord which are based upon or in any way related to Hazardous Materials on, from or affecting the Premises.

(b) For purposes of this Lease, the term "Hazardous Materials" includes, without limit, any flammables, explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances, oil or petroleum products, asbestos or related materials, including as the same are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (19 U.S.C. § 1801, et seq.), the Resource Conservation and Recover Act, as amended (42 U.S.C. § et seq.), applicable state statutes, and in the regulations adopted and publications promulgated pursuant thereto. In addition to the foregoing, the Tenant shall provide the Landlord with copies of any notices, correspondence, warnings, guidance or other written materials received from any governmental authority or other person or entity in connection with Hazardous Materials and the Premises and shall give the Landlord written notice of its discovery or release of any Hazardous Materials on, upon, under, from or into the Premises. The foregoing provisions shall be in addition to any other obligations and liabilities the Tenant may have under this Lease, at common law or otherwise and shall survive the termination or expiration of this Lease.

(c) The Tenant acknowledges that the Landlord requires the Premises to be and remain in compliance with applicable environmental laws, regulations, rules, ordinances and policies and that the Landlord has a direct interest in such matters and, therefore, without limiting the Tenant's obligations under this Article or otherwise, or the Landlord's rights of self-help under this Lease or otherwise, the Tenant agrees that the Landlord may, but shall be under no obligation to, undertake some or all of the matters referred to in the foregoing paragraph (a) on behalf of the Tenant, upon giving the Tenant written notice, and thereupon the Tenant shall have no further right undertake such matters itself but shall continue to be liable to the Landlord pursuant to the Tenant's indemnity.

ARTICLE XXXIV. GOVERNING LAW. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

ARTICLE XXXV. TENANT'S AUTHORITY. The Tenant warrants and represents that the Tenant has the legal power and authority to lease the Premises, and that the execution and delivery of, and the performance of all obligations under this Lease and any financing or other documents executed at the time of the execution of this Lease by the Tenant, have been duly authorized by all necessary action of the Tenant and do not and will not require any consent or approval or any person and do not and will not result in a breach of, or constitute a default under, and indenture, loan or credit agreement, mortgage, deed of trust, or other agreement to which the Tenant is a party or by which Tenant may be bound.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above mentioned.

WITNESS:

ALLAGASH BREWING COMPANY

Elin MacShogor-Jarbes G. Robert Tod, Jr.
G. Robert Tod, Jr.
It's President

"Tenant"

WITNESS:

50 INDUSTRIAL WAY LLC

Elin MacShogor-Jarbes G. Robert Tod, Jr.
G. Robert Tod, Jr.
It's Manager

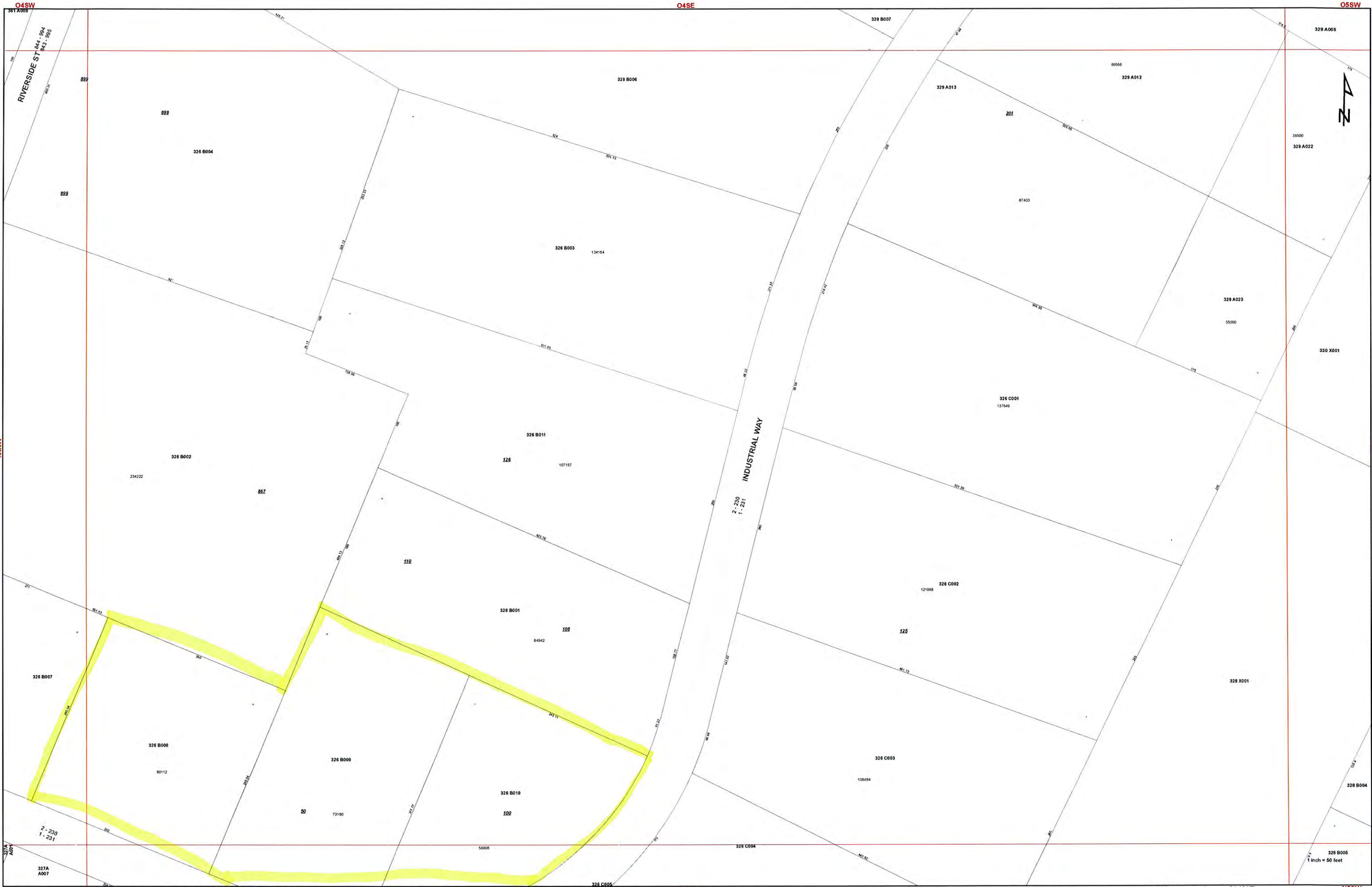
"Landlord"

Three certain lots or parcels of land, with any buildings and improvements thereon, situated on the northerly side of Industrial Way, so-called, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Lot 17, Lot 18 and Lot 19 as shown on a Plan entitled Turnpike Industrial Park-Riverside Street, Portland, Maine, Recording Plat, made for Portland Venture Partners, 100 Silver Street, Portland, Maine, by Land Use Consultants, dated March 25, 1986, revised through September 9, 1986 and recorded in the Cumberland County Registry of Deeds, in Plan Book 157, Page 61 ("the Subdivision Plan"), to which Subdivision Plan reference is hereby made for a more particular description.

Received
Recorded Register of Deeds
Sep 25, 2012 12:37:31P
Cumberland County
Pamela E. Lovley

EXHIBIT F



Verrill Dana^{LLP}

Attorneys at Law

KELLY B. BODEN
PARTNER
kboden@verrilldana.com
Direct: 207-253-4472

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

October 21, 2015

Via Hand Delivery

City of Portland Zoning Board of Appeals
389 Congress St., Room 315
Portland, ME 04101

Re: Conditional Use Application
Proposed Verizon Wireless Facility

Dear Zoning Board of Appeals:

Enclosed please find eleven (11) copies of a Conditional Use Appeal Application for a proposed Verizon Wireless' wireless telecommunications facility at 1877 Congress Street, Portland, Maine. Also, enclosed is the requisite filing fee of \$100.00.

PROJECT DESCRIPTION

Verizon Wireless proposes to place a 1,650 square foot equipment shelter at the proposed site to house cellular equipment. Additionally, Verizon Wireless proposes to place an external generator on a 5 x 10 concrete pad immediately outside of the equipment shelter. Verizon Wireless proposes to screen the generator with arborvitae. An HVAC unit placed on an 8 x 8 concrete pad will also be located outside of the equipment shelter and screened by arborvitae. The equipment shelter will be accessed by a new 12-foot wide gravel driveway. A single parking area is proposed as well. All of the above project components are shown in detail on the Site Plan attached as Exhibit 2.

STANDARDS FOR CONDITIONAL USE

- a. 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

RESPONSE: The proposed Facility will result in approximately one vehicle trip per month, on average, by a Verizon Wireless technician. Accordingly, the construction of the facility will not result in any adverse parking or traffic impacts.

- b. 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

RESPONSE: The proposed Facility will not create unsanitary or harmful conditions. The only noise associated with operation of the Facility is the weekly cycling of the back-up generator. In addition, the proposed Facility will not require water supply or sewage disposal, nor will it produce any wastewater. There will be no emissions to the air, odor, or litter. The only exterior lighting associated with the Facility is a small, down-directional, motion-activated light over the door of the equipment shelter.

- c. The design and operation of the proposed use, including but not limited to landscaping, screening, sign, 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 or other allowable uses in the zone.

RESPONSE: The proposed Facility has been designed to fit into the existing landscape of the site. The equipment shelter has been designed with an architectural shingle roof and residential clapboard siding to fit in with the surrounding neighborhood. There will be no signs, loading, deliveries, trash, waste generation, or materials stored at the facility.

We respectfully request that the Zoning Board of Appeals consider this request at its next regularly scheduled meeting. Please do not hesitate to contact the project manager, Matt Burke (at 508-930-0974), or me should you have any questions.

Thank you and I look forward to hearing from you.

Very truly yours,



Kelly B. Boden

KBB/prf

Enclosures

cc: Matt Burke, Tower Resource Management, Inc.

TABLE OF CONTENTS

1. Conditional Use Appeal Application Form
2. Site Plan
3. Tax Map
4. Purchase & Sale Contract
5. Existing Photos of the Site

EXHIBIT 1

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

Conditional Use Appeal Application

Applicant Information:

Verizon Wireless
NAME

Verizon Wireless d/b/a Portland Cellular
BUSINESS NAME Partnership

118 Flanders Road, Westborough, MA 01581
BUSINESS ADDRESS

(207) 253-4472 kboden@verrilldana.com
BUSINESS TELEPHONE & E-MAIL

Purchase and Sale Contract
APPLICANT'S RIGHT/TITLE/INTEREST

R2
CURRENT ZONING DESIGNATION

EXISTING USE OF THE PROPERTY:
Undeveloped

TYPE OF CONDITIONAL USE PROPOSED:

Utility substation/telephone electronic equipment enclosures

Subject Property Information:

1877 Congress St., Portland, ME 04101
PROPERTY ADDRESS

217-A-10 & 217 A010001
CHART/BLOCK/LOT (CBL)

St. Albans Corp.
PROPERTY OWNER (If Different)

1897 Congress Street, Portland, ME 04102
ADDRESS (If Different)

PHONE # AND E-MAIL

CONDITIONAL USE AUTHORIZED BY
SECTION 14- 78(c)(1)

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.

Kelly Boden (agent for Verizon)
SIGNATURE OF APPLICANT

10/20/15
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

EXHIBIT 2

1. FIELD SURVEY DATE: SEPTEMBER 18, 2015
2. VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988.
3. HORIZONTAL DATUM: NORTH AMERICAN DATUM OF 1983 (NAD83) GEOID 09.
4. CENTER OF PROPOSED LEASE AREA:
LAT 43° 39' 18.99" N
LON 70° 19' 02.60" W
5. OWNER: PORTLAND / ST ALBANS CORP
1897 CONGRESS ST
PORTLAND ME 04102
6. SITE NAME: PORTLAND, ME HEAD END
7. SITE NUMBER: N/A
8. SITE ADDRESS: 1877 CONGRESS ST.
PORTLAND, ME 04101
9. ABUTTERS INFORMATION TAKEN FROM TOWN TAX DATA
10. JURISDICTION: CITY OF PORTLAND, ME
11. TAX ID: MAP 217 LOT A-10
12. DEED REFERENCE: BK 29756 PG 145
13. PLAT REFERENCE: UNRECORDED PLAN BY LAND SERVICES
INC. DATED 1/08/13
14. GRID NORTH BASED ON GPS
15. ELEVATIONS AND COORDINATES FROM GPS LOCATIONS.
16. ALL UNDERGROUND UTILITY INFORMATION PRESENTED HEREON WAS DETERMINED FROM SURFACE EVIDENCE AND PLANS OF RECORD. ALL UNDERGROUND UTILITIES SHOULD BE LOCATED IN THE FIELD PRIOR TO COMMENCEMENT OF ALL SITE WORK.
CALL DIGSAFE 1(800) 322-4844 A MINIMUM OF 72 HOURS PRIOR TO PLANNED ACTIVITY.
17. ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AGENCY MAPS, THE PROPOSED TOWER ON THIS PROPERTY IS LOCATED IN AN AREA DESIGNATED AS ZONE X. NOT WITHIN THE 100 YEAR FLOOD BOUNDARY. COMMUNITY PANEL NO. 2300510012C, DATED 12/8/1998
18. PROPERTY LINE INFORMATION IS COMPILED FROM DEEDS AND PLANS OF RECORD AND IS NOT THE RESULT OF A FULL BOUNDARY SURVEY.
19. BEARING SYSTEM OF THIS PLAN IS BASED ON GRID NORTH.

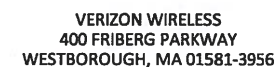
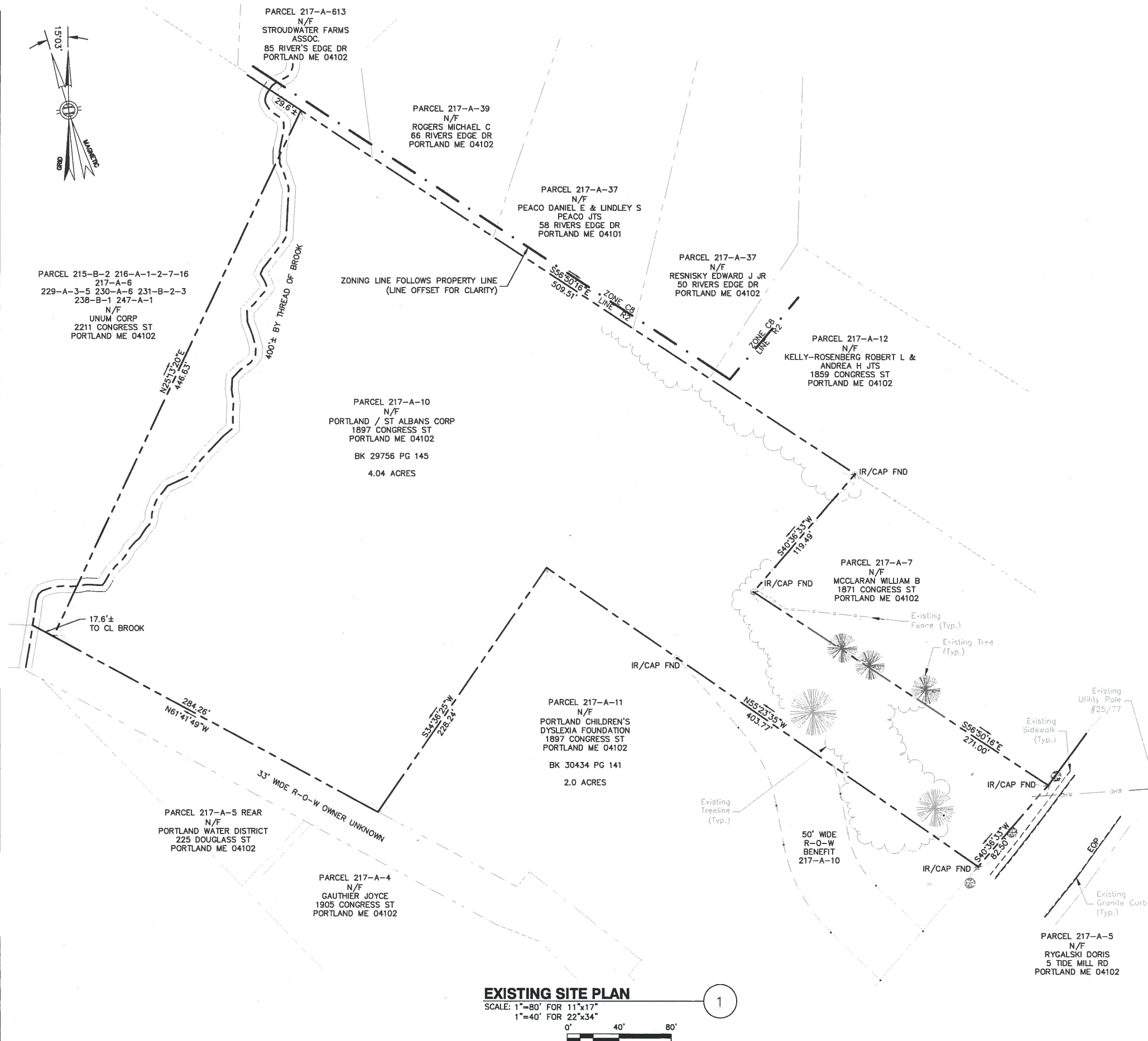
I HEREBY CERTIFY THAT THE LATITUDE, LONGITUDE AND ELEVATIONS PRESENTED HEREON MEET THE REQUIREMENTS OF THE FAA WITH THE FOLLOWING ACCURACIES:

± THREE (3) FEET VERTICALLY
± FIFTEEN (15) FEET HORIZONTALLY

DATE _____

DISTRICT: R2 -- RESIDENTIAL ZONE	
	REQUIRED
MIN. AREA:	10,000 s.f.
MAX HEIGHT:	35 FEET
MIN. FRONTAGE:	50 FEET
MIN. DEPTH:	N/A
MIN. FRONT YARD DEPTH:	25 FEET
MIN. SIDE YARD DEPTH:	12 FEET (1 STORY)
MIN. REAR YARD DEPTH:	25 FEET
MAX LOT COVERAGE:	20%
MIN. IMPERVIOUS SURFACE:	N/A
MIN. OPEN SPACE:	N/A

 LOCUS PROPERTY LINE
 EXISTING PROPERTY LINE
 EXISTING CONTOURS
 ZONING LINE

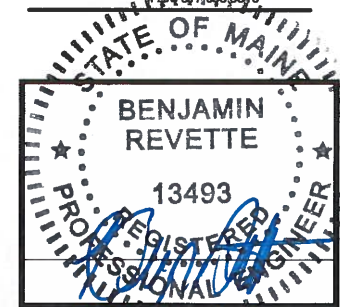


ZONING DRAWINGS

2	10/20/15	FOR SUBMITTAL
1	10/19/15	FOR SUBMITTAL
0	10/16/15	FOR SUBMITTAL
A	10/02/15	FOR COMMENT



Dewberry Engineers Inc.
280 SUMMER STREET
10TH FLOOR
BOSTON, MA 02210
PHONE: 617.695.3400
FAX: 617.695.8310



DRAWN BY: SK

REVIEWED BY: DAS

CHECKED BY:	MFT
-------------	-----

PROJECT NUMBER:	50002925
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JOB NUMBER: 50070909

SITE ADDRESS:

1877 CONGRESS STREET
PORTLAND, ME 04101

SHEET TITLE

EXISTING SITE PLAN

SHEET NUMBER

$$Z_-$$

GENERAL NOTES

1. FIELD SURVEY DATE: SEPTEMBER 18, 2015
2. VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988.
3. HORIZONTAL DATUM: NORTH AMERICAN DATUM OF 1983 (NAD83) GEOID 09.
4. CENTER OF PROPOSED LEASE AREA:
LAT TBD
LON TBD
GROUND EL= TBD
5. OWNER: PORTLAND / ST ALBANS CORP
1897 CONGRESS ST
PORTLAND ME 04102
6. SITE NAME: PORTLAND, ME HEAD END
7. SITE NUMBER: N/A
8. SITE ADDRESS: 1877 CONGRESS ST.
PORTLAND, ME 04101
9. ABUTTERS INFORMATION TAKEN FROM TOWN TAX DATA
10. JURISDICTION: CITY OF PORTLAND, ME
11. TAX ID: MAP 217 LOT A-10
12. DEED REFERENCE: BK 29756 PG 145
13. PLAT REFERENCE: UNRECORDED PLAN BY LAND SERVICES INC. DATED 1/08/13
14. GRID NORTH BASED ON GPS
15. ELEVATIONS AND COORDINATES FROM GPS LOCATIONS.
16. ALL UNDERGROUND UTILITY INFORMATION PRESENTED HEREON WAS DETERMINED FROM SURFACE EVIDENCE AND PLANS OF RECORD. ALL UNDERGROUND UTILITIES SHOULD BE LOCATED IN THE FIELD PRIOR TO COMMENCEMENT OF ALL SITE WORK. CALL DIGSAFE 1(800) 322-4844 A MINIMUM OF 72 HOURS PRIOR TO PLANNED ACTIVITY.
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18. PROPERTY LINE INFORMATION IS COMPILED FROM DEEDS AND PLANS OF RECORD AND IS NOT THE RESULT OF A FULL BOUNDARY SURVEY.
19. BEARING SYSTEM OF THIS PLAN IS BASED ON GRID NORTH.

FAA CERTIFICATION

I HEREBY CERTIFY THAT THE LATITUDE, LONGITUDE AND ELEVATIONS PRESENTED HEREON MEET THE REQUIREMENTS OF THE FAA WITH THE FOLLOWING ACCURACIES:

± THREE (3) FEET VERTICALLY
± FIFTEEN (15) FEET HORIZONTALLY

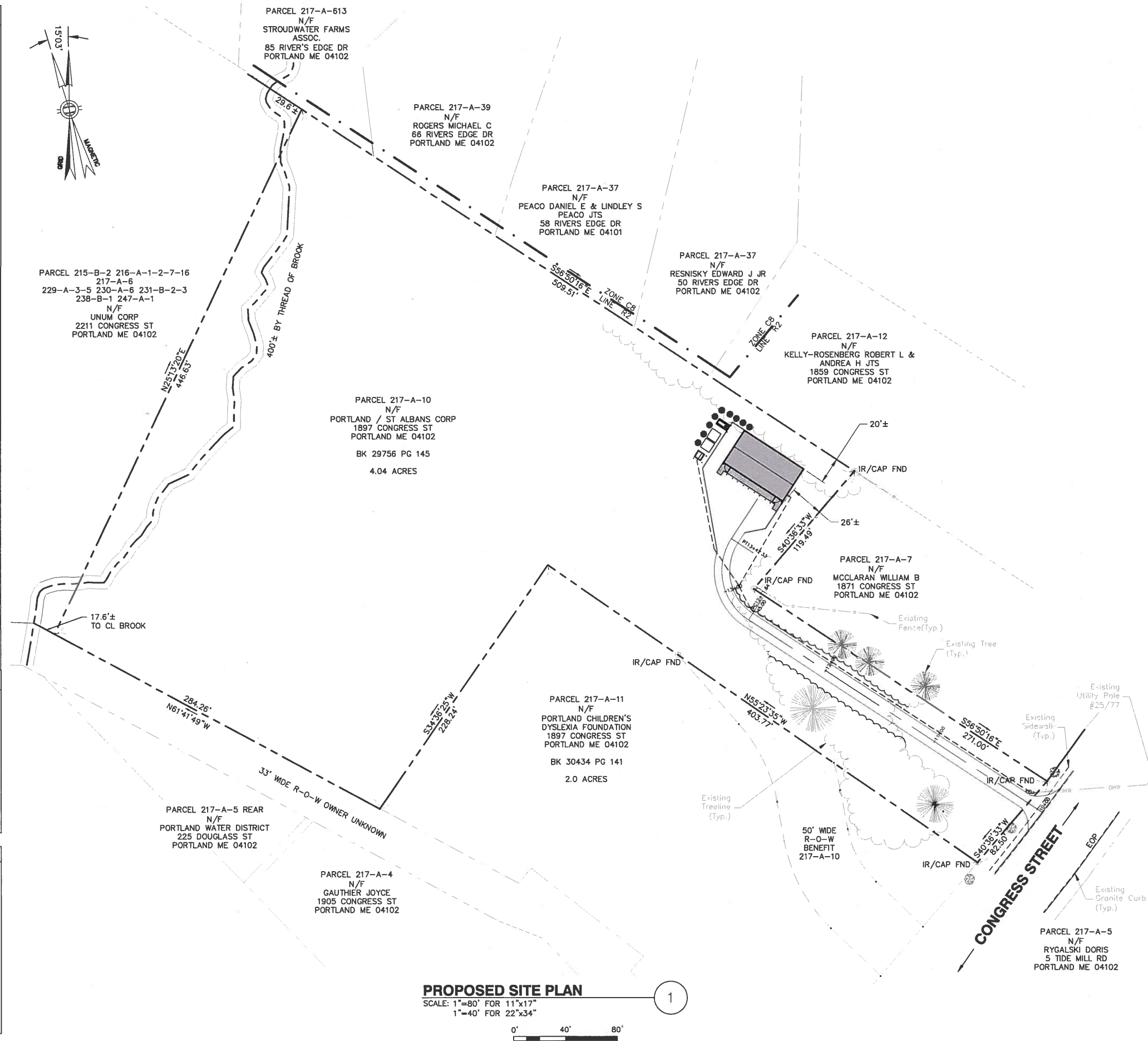
DATE

ZONING INFORMATION

DISTRICT:	R2 - RESIDENTIAL ZONE
REQUIRED	
MIN. AREA:	10,000 s.f.
MAX HEIGHT:	35 FEET
MIN. FRONTAGE:	50 FEET
MIN. DEPTH:	N/A
MIN. FRONT YARD DEPTH:	25 FEET
MIN. SIDE YARD DEPTH:	12 FEET (1 STORY)
MIN. REAR YARD DEPTH:	25 FEET
MAX LOT COVERAGE:	20%
MIN. IMPERVIOUS SURFACE:	N/A
MIN. OPEN SPACE:	N/A

LEGEND

---	LOCUS PROPERTY LINE
- - -	Existing Property Line
---	Existing Road
---	PROPOSED ROAD
---	PROPOSED ROAD CENTERLINE
---	Existing Contour
---	PROPOSED CONTOUR
---	PROPOSED EDGE OF CLEARING
---	Existing Treeline
---	Existing Overhead Utilities



verizon
WIRELESS

VERIZON WIRELESS
400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581-3956

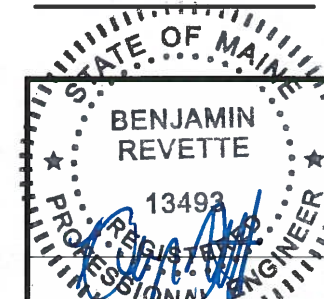
**PORTLAND, ME
HEAD END**

ZONING DRAWINGS

2	10/20/15	FOR SUBMITTAL
1	10/19/15	FOR SUBMITTAL
0	10/16/15	FOR SUBMITTAL
A	10/02/15	FOR COMMENT

Dewberry

Dewberry Engineers Inc.
280 SUMMER STREET
10TH FLOOR
BOSTON, MA 02210
PHONE: 617.865.3400
FAX: 617.865.3310



DRAWN BY: SK

REVIEWED BY: DAS

CHECKED BY: MFT

PROJECT NUMBER: 50002925

JOB NUMBER: 50070909

SITE ADDRESS:

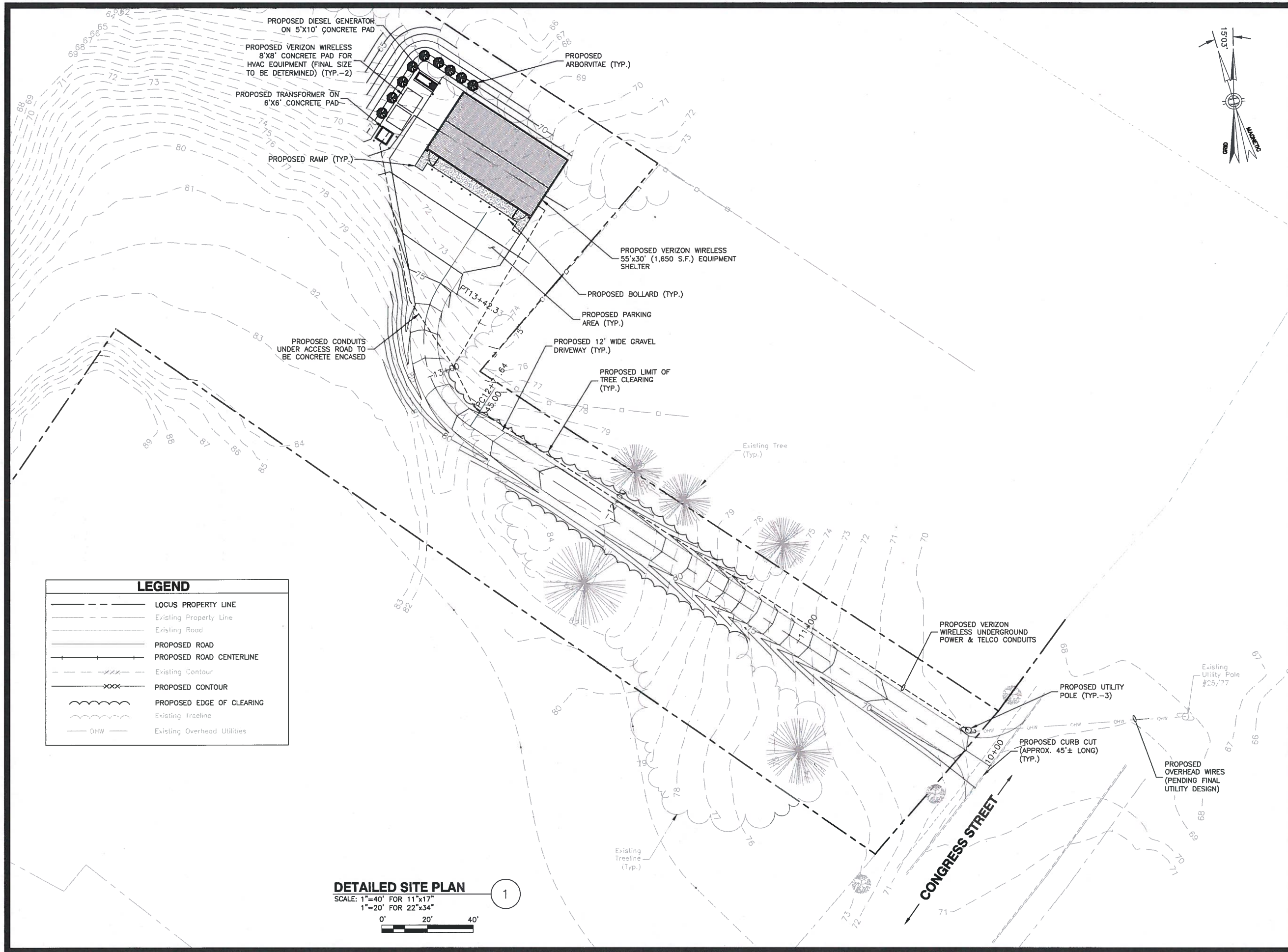
1877 CONGRESS STREET
PORTLAND, ME 04101

SHEET TITLE

PROPOSED SITE PLAN

SHEET NUMBER

Z-2



verizon
WIRELESS

VERIZON WIRELESS
400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581-3956

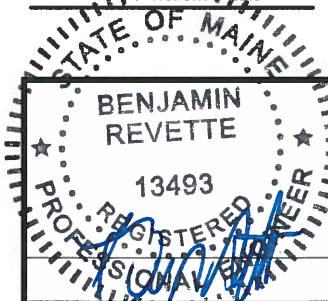
**PORTLAND, ME
HEAD END**

ZONING DRAWINGS

2	10/20/15	FOR SUBMITTAL
1	10/19/15	FOR SUBMITTAL
0	10/16/15	FOR SUBMITTAL
A	10/02/15	FOR COMMENT

Dewberry

Dewberry Engineers Inc.
280 SUMMER STREET
10TH FLOOR
BOSTON, MA 02210
PHONE: 617.865.3400
FAX: 617.865.6310



DRAWN BY: SK

REVIEWED BY: DAS

CHECKED BY: MFT

PROJECT NUMBER: 50002925

JOB NUMBER: 50070909

SITE ADDRESS:

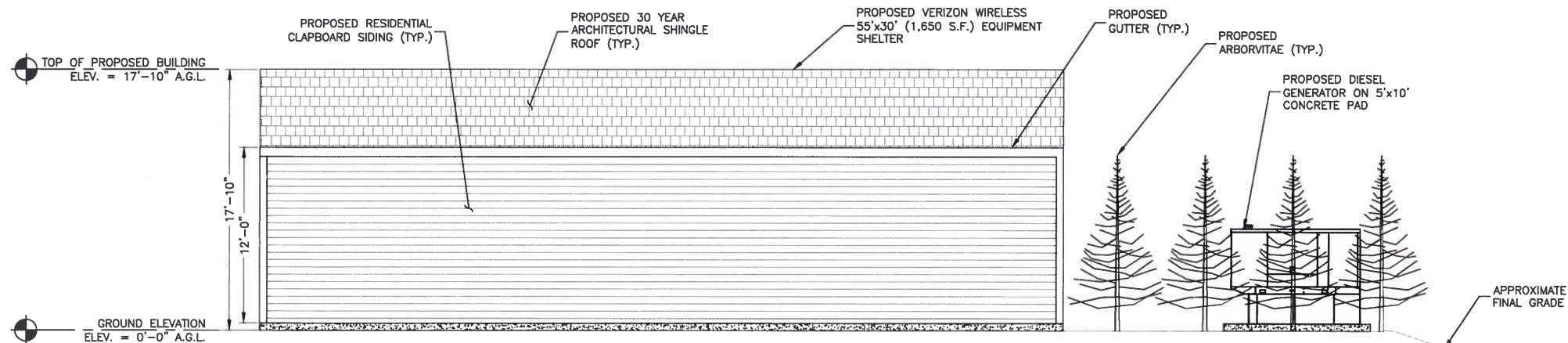
1877 CONGRESS STREET
PORTLAND, ME 04101

SHEET TITLE

DETAILED SITE PLAN

SHEET NUMBER

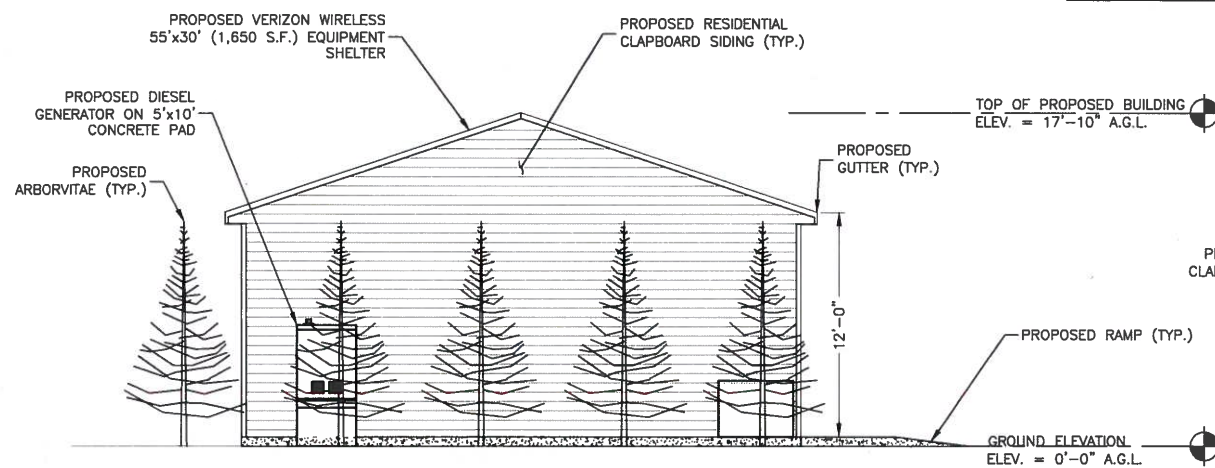
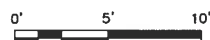
Z-3



SHELTER ELEVATION (NORTH)

SCALE: 1"=10' FOR 11"x17"
1"=5' FOR 22"x34"

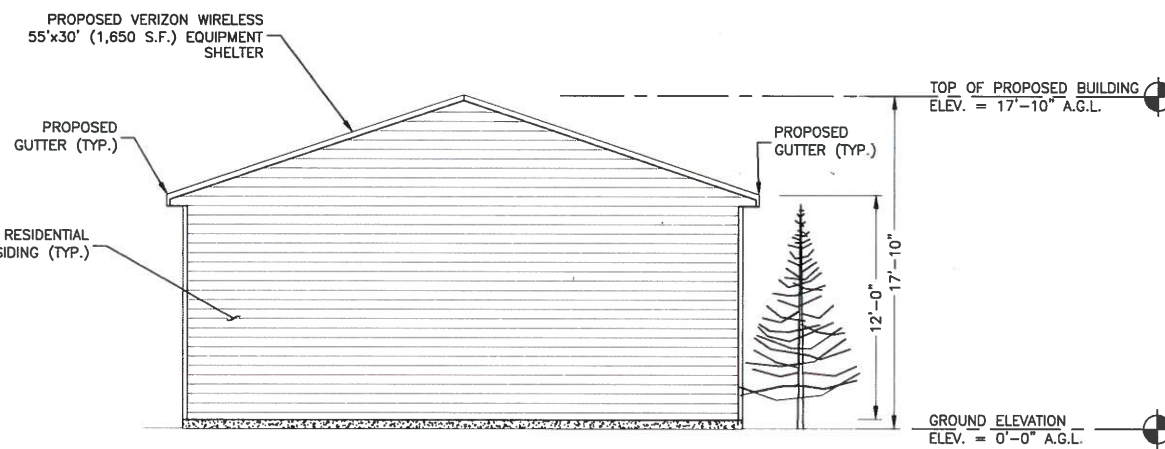
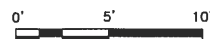
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SHELTER ELEVATION (WEST)

SCALE: 1"=10' FOR 11"x17"
1"=5' FOR 22"x34"

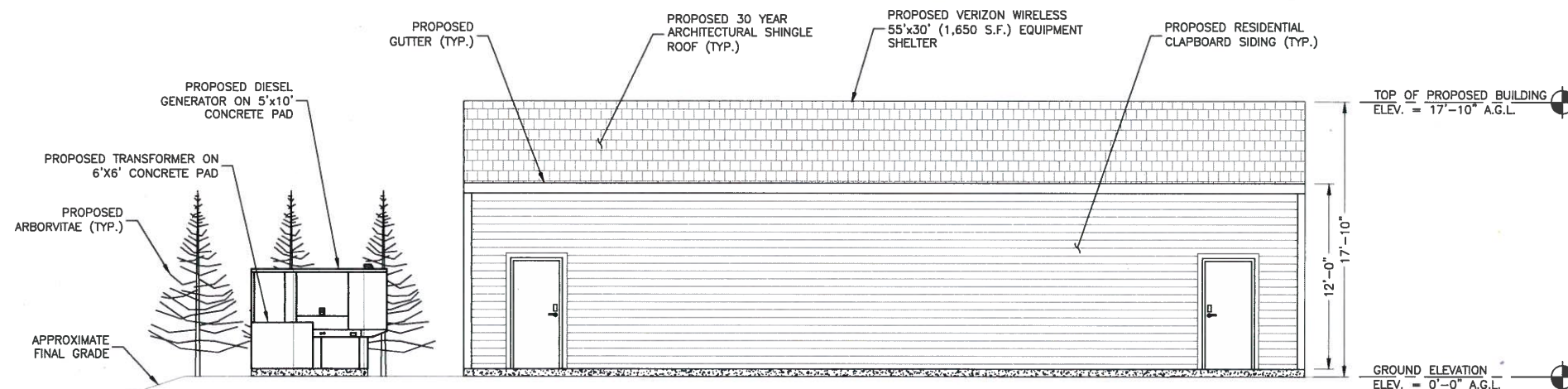
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SHELTER ELEVATION (EAST)

SCALE: 1"=10' FOR 11"x17"
1"=5' FOR 22"x34"

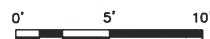
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SHELTER ELEVATION (SOUTH)

SCALE: 1"=10' FOR 11"x17"
1"=5' FOR 22"x34"

3



verizon
WIRELESS

VERIZON WIRELESS
400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581-3956

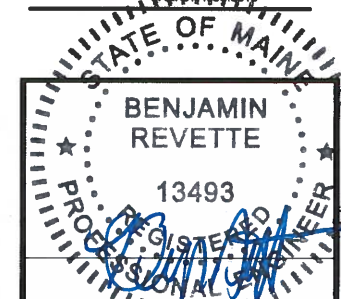
**PORTLAND, ME
HEAD END**

ZONING DRAWINGS

2	10/20/15	FOR SUBMITTAL
1	10/19/15	FOR SUBMITTAL
0	10/16/15	FOR SUBMITTAL
A	10/02/15	FOR COMMENT

Dewberry

Dewberry Engineers Inc.
280 SUMMER STREET
10TH FLOOR
BOSTON, MA 02210
PHONE: 617.885.3400
FAX: 617.885.3810



DRAWN BY:	SK
REVIEWED BY:	DAS
CHECKED BY:	MFT
PROJECT NUMBER:	50002925
JOB NUMBER:	50070909
SITE ADDRESS:	

1877 CONGRESS STREET
PORTLAND, ME 04101

SHEET TITLE

ELEVATIONS

SHEET NUMBER

Z-4

EXHIBIT 3

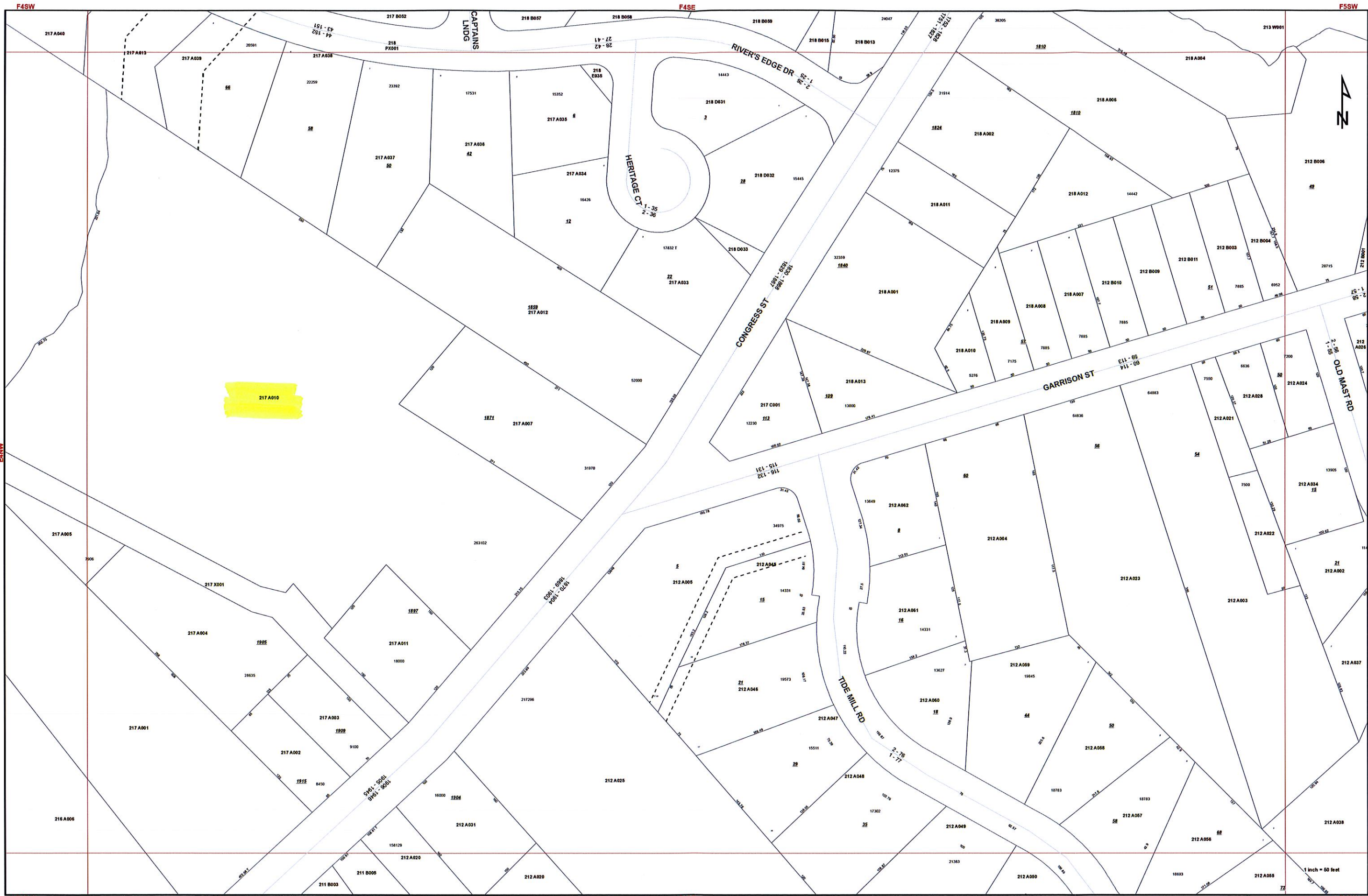


EXHIBIT 4

CONTRACT FOR SALE OF REAL PROPERTY

This Agreement being made this 15th of July, 2015, between PORTLAND/ST. ALBANS, CORP, a Maine corporation ("Seller"), with a mailing address of 1897 Congress Street, Portland, Maine 04102 and PORTLAND CELLULAR PARTNERSHIP, a Maine general partnership d/b/a Verizon Wireless, One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) ("Purchaser").

1. Contract for Sale: Seller agrees to sell and Purchaser agrees to buy a certain lot or parcel of land, with any improvements thereon, located at 1877 Congress Street, Cumberland County, State of Maine and more particularly described in Exhibit "A" attached hereto, consisting of approximately 4.04 acres of land, together with all rights, easements and appurtenances benefitting and belonging thereto (the "Premises").

2. Purchase Price and Deposit: The total purchase price for the Premises (the "Purchase Price" shall be _____ subject to proration of taxes and other charges as hereinafter stated, to be paid as follows:

(i) _____ (the "Deposit") shall be delivered in escrow to Seller's real estate agent, Demetria Chadbourne, within five (5) business days after expiration of the Due Diligence Period referred to in Section 12 below; and

(ii) The balance of the Purchase Price shall be paid to Seller at closing by certified check, cashier's check or federal wire transfer, and the Deposit shall be released to Seller from escrow at the time of closing, as provided hereinafter.

3. Title Conveyed: Seller shall convey to Purchaser good clear marketable title in fee simple, insurable at regular rates of title insurance, and free and clear of all tenancies, mortgages, liens, encroachments and encumbrances whatsoever, including restrictions and easements of record that would prevent Purchaser's use of the premises as a communications facility (all or any of which shall be known as a "defect" or "defects"). Purchaser may, in its sole discretion, waive any such defect. Purchaser shall pay the cost of title insurance, including the cost of title examination. If the title to all or part of the Premises is defective or unmarketable, or if any part of the Premises is subject to one or more defects, Seller shall have a reasonable time, not to exceed 30 days after written notice thereof, within which to remedy any such defect, or to obtain title insurance against the same. It is understood that this Agreement and the obligations of Purchaser hereunder shall be conditioned upon Seller's removing all defects as set forth in the Section. If Seller fails to remove said defects within the period provided herein, Purchaser may (a) cure any such matter and deduct the cost thereof from the Purchase Price at closing, or (b) elect to close notwithstanding any such matter, or (c) terminate this Agreement in which case Seller shall refund all payments made by Purchaser hereunder.

4. Deed and Closing: Closing shall take place in the offices of the Purchaser's counsel on a mutually convenient date within thirty (30) business days after satisfaction or expiration of the Zoning Contingency set forth in Section 10 below. The purchase and sale contemplated herein

shall be closed by Purchaser paying to Seller the amount set forth in Section 2, and by Seller executing and delivering to Purchaser a warranty deed conveying title to the Premises in the manner required by Section 3. Seller agrees that the description in the deed to be delivered at closing shall, at the option of Purchaser, utilize a description determined by Purchaser's survey of the Premises. The date of such payment and delivery shall be referred to herein as "the Closing Date". At the time of closing, the Seller shall also provide (1) an owner's affidavit regarding parties in possession and indemnities regarding mechanics' liens sufficient for Purchaser's title insurance company to delete exceptions for such matters from Purchaser's title insurance policy, (2) such evidence of Seller's existence and authority as Purchaser or its title insurance company shall reasonably request, (3) a withholding exemption certificate pursuant to §1445 of the Internal Revenue Code of 1954, as amended, (4) an underground tank notice pursuant to 38 M.R.S. A. § 563(6), and (5) and such other documents as are customarily and reasonably required in order to convey and record title to the Premises.

5. Possession of the Premises: Full possession of the Premises free of all tenants shall be delivered to Purchaser on the Closing Date, with any improvements on the Premises to be in the same condition as they are now, reasonable use and wear excepted.

6. Environmental: Seller warrants that during the period of Seller's ownership of the Premises, the Premises have not been and shall not be used for the storage, generation, discharge or disposal of any hazardous waste, substance or material or other toxic chemical pollutant (including without limitation underground petroleum storage tanks) or otherwise in violation of environmental laws, regulations, guidelines, standards, or policies. Seller further warrants that, to the best of Seller's knowledge, the Premises were not used for any such purposes prior to the time Seller acquired title to the Premises. Use of the Premises for any of such purposes, or the presence of any hazardous or toxic materials, substances or wastes upon or under the Premises, at any time prior to closing, including prior to Seller's acquisition of title to the Premises, shall constitute a title defect, rendering the title unmarketable under the provisions hereinabove. Seller shall defend, indemnify and hold harmless Purchaser, its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including without limitation, attorney and consultant fees, investigation, cleanup and removal costs, arising out of any breach of the foregoing representations and warranties.

7. Prorations: All rents, real estate and personal property taxes and assessments, sewer and water charges, charges for fuel, service and supply contracts, utilities and the like shall be prorated as of the day of closing. Each party shall pay its share of transfer taxes as provided by law. Assessments, either general or special, for improvements made prior to closing, whether matured or unmatured, shall be paid by Seller. Seller represents and warrants that it has no notice or knowledge of any special assessments having been made or levied against the Premises and to Seller's knowledge there are no public improvements which have been planned, commenced or completed which would result in a special assessment against the Premises. Seller further represents and warrants that Premises is not under any classification for tax purposes resulting in the payment of penalties, charges or other amounts upon the change of use or development thereof. Any inaccuracy in the foregoing representations and warranties shall be deemed a title defect rendering the title unmarketable as aforesaid.

8. Right of Assignment: Purchaser may assign its rights, duties and obligations under this Agreement to Purchaser's principal or subsidiaries, affiliates or subsidiaries of its principal or to any entity which acquires all or substantially all of Purchaser's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. Said assignment shall be effective upon notice to Seller in the manner provided below. Any other assignment shall require the written consent of Seller, such consent not to be unreasonably withheld.

9. Subdivision Status: Seller represents and warrants to Purchaser that the conveyance of the Premises to Purchaser shall not constitute a subdivision and will not require subdivision approval by the City of Portland.

10. Zoning Contingency: This Agreement is expressly made contingent upon the Purchaser obtaining all governmental variances, zoning changes, permits and approvals needed to permit the Purchaser's use of the premises as a communications facility "Approvals". The term "Approvals" shall include all easements, agreements and other prerequisites which shall be necessary to extend utilities to the Premises. The Seller hereby authorizes Purchaser, in the Seller's name if necessary, and at the Purchaser's expense to apply for and secure from any governmental authority or private party such Approvals as the Purchaser desires. Seller shall reasonably cooperate with Purchaser to assist in obtaining the Approvals, including executing documents reasonably necessary to petition the appropriate public body for zoning relief required for Purchaser's intended purposes. All such activities are to be at the expense of Purchaser. Purchaser shall not be deemed to have "obtained" the Approvals unless (i) all Approvals are final and non-appealable, and not subject to any appeal, and (ii) the Approvals do not contain conditions or requirements unacceptable to Purchaser in its sole discretion. Purchaser shall notify Seller in writing when the Approvals have been obtained. In the event the Approvals have not been obtained on or before the date which is ninety (90) days after the date of execution of this Agreement, or if Purchaser prior to that date determines that the Approvals cannot be obtained in a timely manner, then Purchaser shall have the right to terminate this Agreement by written notice to Seller. If Purchaser timely exercises its right to terminate for any condition contained in this Section, this Agreement shall terminate, the Deposit shall be returned to Purchaser, and neither party shall have any further obligations hereunder except for any obligations expressly designated hereunder to survive the termination of this Agreement. If Purchaser shall be diligently pursuing any Approval at the expiration of the aforesaid ninety (90) day period, Purchaser may by notice to the Seller extend such period for a reasonable period of time (not to exceed one hundred twenty (120) days) in order that the Purchaser may receive a final decision thereon (and notwithstanding such extension Purchaser shall continue to have all of its rights set forth in this Section). Purchaser agrees to make good faith efforts to obtain the Approvals, but in no event shall Purchaser be required to appeal any denial or other negative determination with respect to any Approval.

11. Condemnation, Damage or Destruction: Until the delivery of the deed from Seller to Purchaser, the risk of loss or damage to the Premises by fire or condemnation shall be on Seller. If all or any part of the Premises are condemned, damaged or destroyed prior to the Closing Date, Purchaser shall have the option of terminating this Agreement. In the event of such termination, Seller shall repay all sums theretofore paid by Purchaser.

12. Entry for Inspection; Due Diligence Period: Purchaser is authorized at its expense to enter the Premises and make such inspection, surveys, sub-surface boring tests, environmental assessments, appraisals and other activities of a similar nature as Purchaser shall deem appropriate, so long as Purchaser shall not unreasonably interfere with Seller's use of the Premises. Purchaser will repair any damage caused by these operations. Purchaser shall have a period of ninety (90) days from the date of this Agreement within which to terminate the Agreement by written notice to Seller if Purchaser is not satisfied in its sole discretion with the results of any such inspections, tests, appraisals or surveys.

13. Default: If Purchaser fails to consummate this transaction for any reason constituting a default on the part of the Purchaser, Seller may, as its sole remedy, retain the Deposit as liquidated damages, and this Agreement shall be canceled. The parties agree that actual damages are impossible to determine and agree, after negotiation, that the foregoing liquidated damages are the parties' best estimate of actual damages that would be incurred.

14. Brokers: Each party represents and warrants that Demetria Chadbourne is the only real estate broker involved in this transaction and Seller shall be responsible for the commission to be paid. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any other broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

15. Successors and Assigns: The terms, covenants and provisions of this Agreement shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Seller and Purchaser.

16. Governing Law: This Contract for Sale of Real Property and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maine.

17. Notices: All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Seller: Portland/St. Albans, Corp
1897 Congress Street
Portland, Maine 04102

Purchaser: Portland Cellular Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate



With a copy to: Raymond A. Pelletier, Esq.
Verrill Dana, LLP
One Portland Square, 9th Floor
P.O. Box 586
Portland, Maine 04112-0586

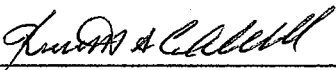
Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. Miscellaneous: The submission of this Agreement for examination is intended for negotiation and discussion purposes only, and this Agreement shall become effective only upon the execution and delivery by Seller and Purchaser. This document and the exhibits attached hereto constitute the entire agreement of the parties and no oral or implied agreements or representations will be binding upon the parties hereto. The provisions of the Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

SELLER:

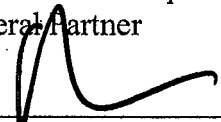
PORTLAND/ST. ALBANS, CORP

By: 
Print Name: Kenneth A Caldwell
Its: PRESIDENT

PURCHASER:

PORTLAND CELLULAR PARTNERSHIP,
d/b/a VERIZON WIRELESS

By Cellco Partnership
Its General Partner

By: 
David R. Heverling
Area Vice President Network

71515

EXHIBIT A

(Description of Property)

That certain parcel of land approximately 4.04 acres in size, situated at 1877 Congress Street, Portland, Maine, identified as tax parcel 217-A-10 and depicted on Exhibit A-1 attached hereto. For source of title see Warranty Deed dated July 16, 2012, recorded in the Cumberland County Registry of Deeds in Book 29756, Page 145.

EXHIBIT A-1

(Depiction of Premises)

A handwritten signature or set of initials, possibly "JH", written in dark ink in the bottom right corner of the page.

EXHIBIT 5









Ann Machado - RE: Statement from Stroudwater Village Association regarding Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland

From: Bret Yarrison <byarrison@gmail.com>
To: <amachado@portlandmaine.gov>
Date: 12/3/2015 1:58 PM
Subject: RE: Statement from Stroudwater Village Association regarding Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland
CC: <edsuslovic@portlandmaine.gov>

Ann,

I'd like to second the motion from the SVA with regards to the Verizon Wireless Conditional Use Application on/of 1877 Congress Street.

We have a lot of zoning and development changes going on in our area and I'd like to see things slow down and allow the residents to review these requests.

Thank you,

Bret Yarrison - 35 Penrith Rd.

Ann Machado - Verizon sale

From: raeleneg <raeleneg@maine.rr.com>
To: <amachado@portlandmaine.gov>
Date: 12/4/2015 6:30 AM
Subject: Verizon sale
CC: Charlton Smith <charltonsmith@mac.com>, Charlton Smith <charltonsmith@me...>

Hi,

Sorry but I saw this late.

I am against this Verizon site abutting our neighborhood. I told Carl Smith it would be like a plane taking off. Almost. Not good.

Two of the 5 people who abutt this site have their homes on the market as we speak. This will de-value their properties significantly.

Surely Verizon can find another non-residential site? This is VERY bad for our neighborhood, Anne.

Raelene Gardner & Bill Bartholomew
22 Heritage Court
775-0375

Sent from my U.S. Cellular® Smartphone

Ann Machado

From: bill bartholomew <bartholomewbill@yahoo.com>
To: "amachado@portlandmaine.gov" <amachado@portlandmaine.gov>
Date: 12/4/2015 10:02 AM

Dear Mrs. Machado,

Rivers Edge Development. I think it is a mistake to allow a Generator station to abut the assoc. land as it will produce unwanted noise and noxious fumes. Let them go elsewhere.

Bill Bartholomew
22 Heritage Court

Ann Machado - Verizon equipment building adjacent to River Edge Drive

From: Phil Haskell <pjhaskell@aol.com>
To: <amachado@portlandmaine.gov>
Date: 12/6/2015 8:49 PM
Subject: Verizon equipment building adjacent to River Edge Drive

I agree with the SFHA position. Philip J. Haskell-16 Captains Landing, Portland Maine

Ann Machado - Objection to the Verizon equipment facility adjacent to Rivers Edge Drive

From: Amelia Hassler <ameliahassler@gmail.com>
To: <amachado@portlandmaine.gov>
Date: 12/6/2015 9:44 PM
Subject: Objection to the Verizon equipment facility adjacent to Rivers Edge Drive

Hi Ann,

My name is Amelia Hassler and I purchased a home at 93 River's Edge Drive a little over a year ago. I'm writing with great concern about the proposed zoning change for the Verizon equipment facility. I wanted to formally express my opposition to the possibility of allowing Verizon to build a large commercial facility in such close proximity to our residential neighborhood.

When I bought into this neighborhood just over a year ago, I carefully researched the zoning of the directly adjacent areas, specifically looking for whether or not the residential / natural woodland surroundings would remain intact (hence the property value and aesthetic of the neighborhood would remain intact). Unlike some of my neighbors who bought 10 or more years ago, I paid top dollar for my property... and I'm deeply concerned that the looming presence of such a large industrial commercial facility so close to our own residential properties will significantly reduce the property values, causing me to lose money on such large personal investment.

This is such a special quiet beautiful neighborhood of Portland that has a unique protected feel to it, and I'm greatly saddened and worried that this proposed equipment facility will have an adverse impact for all of us who live here. The idea of a big 'for profit' company swooping in and being able to change the rules, and in doing so disrupt the quality and value of our personal properties, is deeply upsetting.

I've had nothing but positive experiences in the past with your zoning board and the city of Portland in general... so I appeal to you to please not allow commercial use of this land... to not allow big businesses like Verizon to intrude on the protected residential neighborhoods of Portland (where the impact to the individual is deeply felt).

Thank you for your time and your understanding.

Sincerely,

Amelia Hassler
93 Rivers Edge Drive

Ann Machado - Verizon Wireless Conditional Use Application - 1877 Congress Street

From: Dan Peaco <dpeaco@daymarkea.com>
To: "amachado@portlandmaine.gov" <amachado@portlandmaine.gov>
Date: 12/10/2015 8:27 AM
Subject: Verizon Wireless Conditional Use Application - 1877 Congress Street
CC: "edsuslovic@portlandmaine.gov" <edsuslovic@portlandmaine.gov>, "estrimli..."

Ann Machado,

My wife Lindley and I are homeowners in the Stroudwater Farms development. We have recently become aware of the October 21, 2015 Conditional Use Application submitted by Verizon Wireless to the Zoning Board of Appeals. I understand this application was on the agenda of a recent meeting of the Board and is pending a decision at an upcoming meeting. The proposed facility is on a lot at 1877 Congress Street.

We are one of four property owners in Stroudwater farms that directly abut the 4 acre property that is the location for the proposed Verizon Wireless facility. Our lot is identified in the depiction of the premises included in Attachment 1-A of the Application.

It is my understanding that you have already received some comments from Michael Rodgers (our neighbor and also a direct abutter to the property) and that Gerard Kiladjian (also a direct abutter) attended the recent Board meeting. Ed Resnisky is the fourth direct abutter in our development.

At this point, we are still learning about the proposed plan. We are interested in being included in any communications or notices that the Zoning Board of Appeals issues with respect to this matter. We are also concerned and interested in receiving the feedback on the questions that have been raised by Michael Rodgers and others thus far. I also understand that other homeowners in the Stroudwater Farms have raised concerns to your attention, as well.

We will be seeking additional information in the coming days and will offer our further comments and concerns once we have a better understanding of the proposal.

Thank you,

Daniel E. Peaco

58 River's Edge Drive
PORTLAND, ME 04102

HOME: (207) 773-2449
CELL: (617) 283-8163
dpeaco@maine.rr.com

Ann Machado - Concerns relating to Verizon's October 20, 2015, Conditional Use Appeal Application for 1877 Congress Street, Portland

From: Michael Rogers <michael.rogers66@gmail.com>
To: <amachado@portlandmaine.gov>, <edsuslovic@portlandmaine.gov>, <estrimlin...
Date: 12/8/2015 11:11 AM
Subject: Concerns relating to Verizon's October 20, 2015, Conditional Use Appeal Application for 1877 Congress Street, Portland

Dear Portland Zoning Board of Appeals:

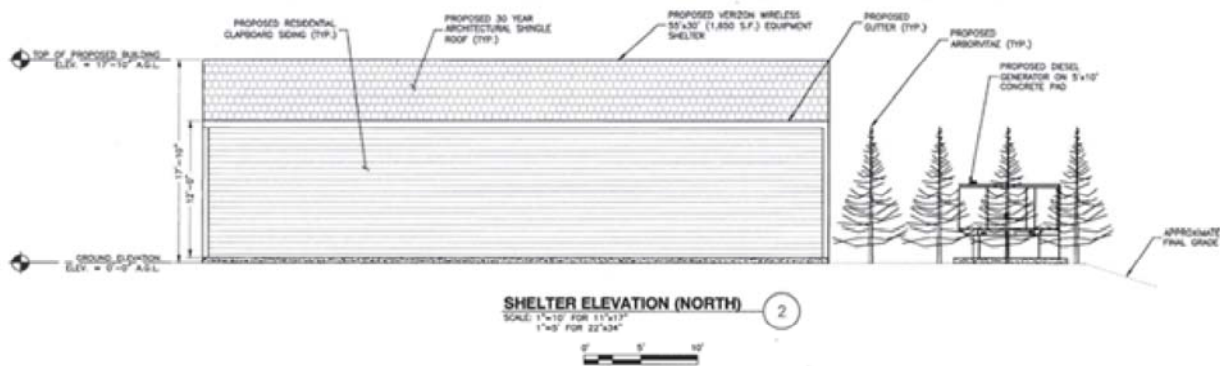
I am an abutter to 1877 Congress Street, Portland, Maine. I live at 66 River's Edge Drive (Lot 9) in the Stroudwater Farm subdivision. I have the following concerns relating to Verizon's Conditional Use Appeal application dated October 20, 2015.

1) The following is the last of Portland's three standards for a Conditional Use:

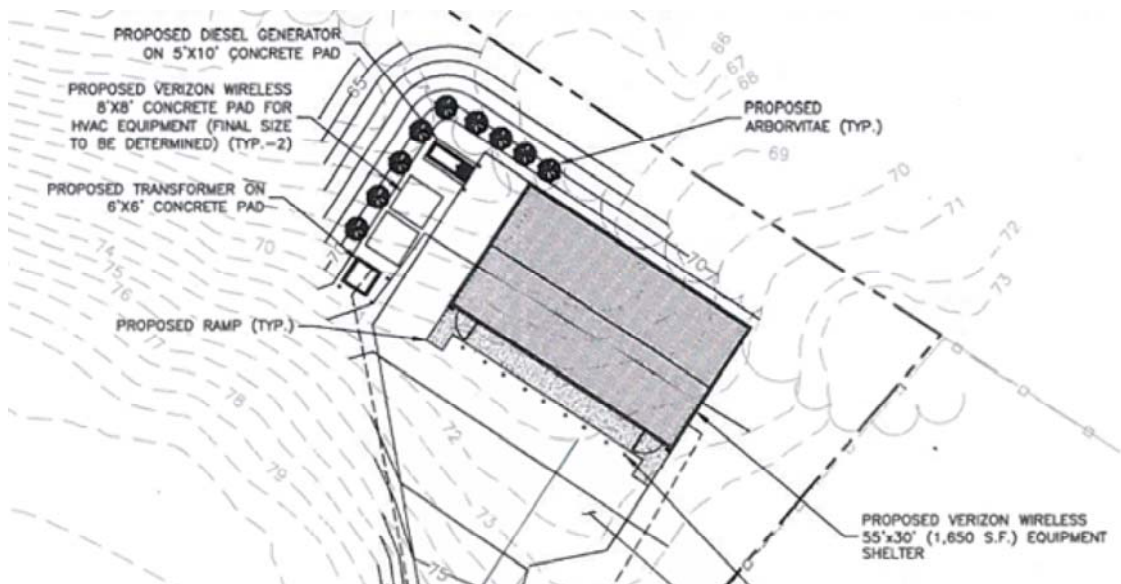
- c. The design and operation of the proposed use, including but not limited to landscaping, screening, sign, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

RESPONSE: The proposed Facility has been designed to fit into the existing landscape of the site. The equipment shelter has been designed with an architectural shingle roof and residential clapboard siding to fit in with the surrounding neighborhood. There will be no signs, loading, deliveries, trash, waste generation, or materials stored at the facility.

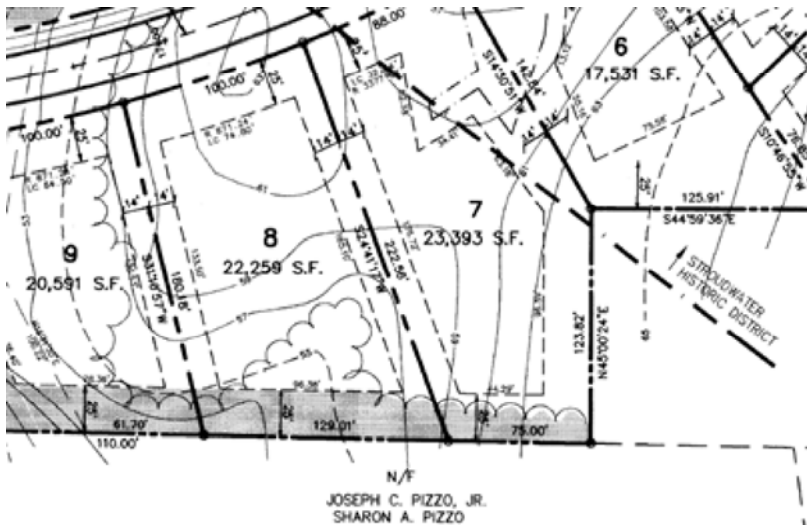
The Facility plans show a final elevation just below 18' above grade.



As planned, the center of the grade for the Facility would be 71' above grade. Adding the building's 18' elevation, depicts the center of the Facility would rise about 89' above sea level.



Consider the grade levels of the abutting neighbors (proposed location is in the lower right corner of this plan - N/F Pizzo):



The following are the average grades of the abutting lots in comparison to the Facility's highest point:

Lot 6 63' Facility is 29% higher

Lot 7 60' Facility is 33% higher

Lot 8 59' Facility is 34% higher

Lot 9 55' Facility is 38% higher

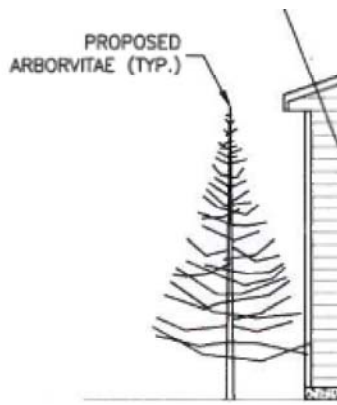
Lots 6 and 7 are most adversely affected given their close proximity. Is it necessary for the building to be so tall? Could the building be partially constructed below grade to lessen its height and thereby better "fit in to the surrounding neighborhood" as quoted from the application?

Given its plan, how can the Facility truly "fit in to the existing landscape of the site"?

Rather than fitting in, it would dominate the site. Its flora is slow growing and nowhere near 18' in height in unison. The statement, "fit in to the existing landscape of the site", is a non-sequitur.

2) The application indicates arborvitae will be planted, yet did not submit a landscaping plan.

The following is all I gleaned from the application.



Wouldn't it be reasonable to at least proffer the following?

types of arbovitae (ideally, there should be a mix, as there are five species of which two are indigenous to North America)

Number of trees

Location of said trees (optimally they would be staggered)

Planting distance between trees

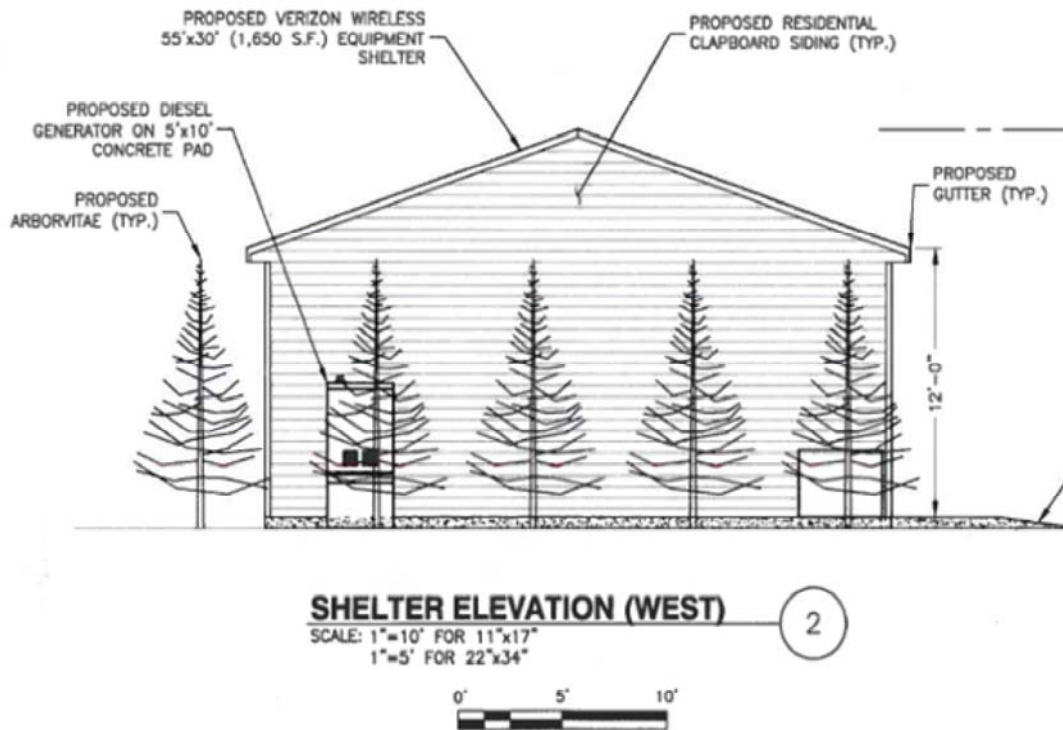
Grade level of trees

Height of trees upon planting

How much of the Facility's north and west side will be obscured with the trees

Tony Muench is a local landscape architect and an expert on designing a landscaping plan to meet the needs of all stakeholders. I highly recommend Tony.

3) Why is the diesel generator planned for the west side of the Facility?



I would think Verizon would want to be a good neighbor and keep the generator away from its immediate neighbors. This plan fails that.

Are there any specifications for the decibel level of the generator?

The elevations should clearly state the clapboard siding would be vinyl.

Why are gutters needed? Properly insulated buildings don't need gutters. Storm water can easily be collected below grade with perimeter drainage and directed a designated area. Further, gutters require constant maintenance.

4) Verizon wants to acquire 4 acres yet seeks to shoehorn the Facility in one small corner of the property closest to its Stroudwater Farm neighbors and another Congress Street abutter.



Is there a reason for its location? Is this the optimal location given the lower grade of the site so as to be less conspicuous? The center of the 4-acre lot appears to be at least 15' higher so the proposed site may be the best spot, but I do not have sufficient data to form an opinion.

) What plans does Verizon have for the remaining land not planned currently for development?

ould Verizon consider setting adding the undeveloped land to remain deeded “forever wild”? Perhaps the land could be donated to Portland Trails and used for passive recreation. Speaking only for myself, I believe it would allay the concerns of many of my neighbors if Verizon set aside the remaining land as “green space” and not propagate additional commercial buildings.

do not want to replicate what occurred on nearby Cobb Avenue in Stroudwater when a rental car facility was approved and constructed in 2012.



After three years, the 6' stockade fence and immature and sparsely planted arborvitae offer no meaningful blocking of the commercial enterprise abutting the residential zone.

7) Have you considered designing the Facility to appear like an old barn?

The present design of the Facility is not inspiring. The planned vinyl sided warehouse offers NO architectural appeal in one of Portland's oldest neighborhoods. Instead of the monolithic plastic building with no break (windows) in its design, perhaps a clapboard (or shingle) building shaped and

stained like an old barn would be more appropriate, visually pleasing and more fitting for the lot, given it is just outside the Stroudwater Historic District.

I am a real estate agent and have also designed and built single-family homes and commercial buildings. I am a native of Stroudwater, trustee of the Stroudwater Village Association (SVA) and resident of Stroudwater Farm. My letter does not represent the position of anyone but me.

Residents are naturally concerned for the further erosion of the character of residential life here in Stroudwater.

Notice of Verizon's intentions occurred so quickly around the holidays it has made it difficult for my fellow Stroudwater residents to properly evaluate the application.

If Verizon truly wants to be a "good neighbor", then I recommend Verizon reach out to the SVA and convene a neighborhood meeting inviting Stroudwater residents and Portland Trails. Verizon would present their proposed plan and listen to the concerns of Stroudwater residents and hopefully reach an agreement meeting the needs of all stakeholders prior to the Portland Zoning Board consider their presently incomplete application for conditional use appeal approval.

Thank you.

Regards,

Michael Rogers, MBA, Realtor

Ann Machado - Zoning change outer Congress St

From: raeleneg <raeleneg@maine.rr.com>
To: <amachado@portlandmaine.gov>
Date: 12/8/2015 5:58 AM
Subject: Zoning change outer Congress St
CC: Charlton Smith <charltonsmith@me.com>

Hi Ann,

It just occurred to me that there is commercial zoning less than a mile from the Elks Club and from the Masonic building, just past Unum.

Why are these projects not looking into that as an option? Lot less hassle. Of course it's more money but that's because it's zoned commercial.

Also if these projects go thru, we are setting a precedent for the rest of the Stroudwater area in the future.

These are not isolated incidents. Zoning is zoning.

Also, Ann, the Verizon Issue involves wetlands. They may have to build closer to Congress St than they told us.

Thank you.

Raelene Gardner
Rivers Edge

Sent from my U.S. Cellular® Smartphone

Ann Machado - Proposed re-zoning of Congress Street

From: "Galardo, Barbara (Portland, ME)" <bgalardo@fairpoint.com>
To: "amachado@portlandmaine.gov" <amachado@portlandmaine.gov>
Date: 12/7/2015 4:36 PM
Subject: Proposed re-zoning of Congress Street

Ann,

I understand that a zoning request has been made to accommodate a storage unit for Verizon on outer Congress Street and that the position of the Verizon building may affect the property values of the residential homes on River's Edge Drive. Please postpone the approval of the request until the homeowners on River's Edge can determine if there is any negative affect of the re-zoning request.

Thank you

Barbara Galardo
88 River's Edge Dr.
Portland, ME 04102

This e-mail message and its attachments are for the sole use of the intended recipients. They may contain confidential information, legally privileged information or other information subject to legal restrictions. If you are not the intended recipient of this message, please do not read, copy, use or disclose this message or its attachments, notify the sender by replying to this message and delete or destroy all copies of this message and attachments in all media.

Ann Machado - Rebuttal: Verizon 1877 Congress St Generator Proposal

From: "Raelene Gardner" <raeleneg@maine.rr.com>
To: <amachado@portlandmaine.gov>
Date: 12/4/2015 4:11 PM
Subject: Rebuttal: Verizon 1877 Congress St Generator Proposal
CC: <stroudwatervillageassociation@gmail.com>, "Charlton Smith" <charltons...>

Hi again, Ann,

I sent you an email against this proposal on Dec3.

Again, I think this project will devalue all the homes that abut the proposed Verizon generator site.

That generator will be like a plane taking off.

We all know what a small generator sounds like;

I can only imagine the noise a generator of that size will produce.

This will adversely affect property values in the ten's of thousands, I'm afraid.

I wouldn't buy a house next to one . . .

May I recommend that any evaluation, review or consideration of this project include an onsite visit to an existing Verizon generator?

I would like for an SVA and/or River's Edge member to be in attendance.

where are other sites located in Maine?

Surely this generator does not need to be in the midst of a residential area?

Once it is built, it will be too late . . .

Thank you,

Raelene Gardner

(207) 775-0375 h

(207) 408-1626 c

<mailto:raeleneg@maine.rr.com>

Ann Machado - Fwd: Re: Zoning change outer Congress St

From: raeleneg <raeleneg@maine.rr.com>
To: Charlton Smith <charltonsmith@mac.com>, Ann Machado <AMACHADO@portlandma...
Date: 12/10/2015 4:32 PM
Subject: Fwd: Re: Zoning change outer Congress St
CC: BILL'S <bartholomewbill@yahoo.com>, <lpeaco@maine.rr.com>

Sent from my U.S. Cellular® Smartphone

----- Original message -----

From: raeleneg
Date: 12/10/2015 3:27 PM (GMT-05:00)
To: Ann Machado
Cc: Charlton Smith , Charlton Smith , "dkoloski@mba2002.hbs.edu" , lizfreeman@maine.rr.com, Robert & Susan Close , lpeaco@maine.rr.com
Subject: Re: Zoning change outer Congress St

Thank you Ann.

Also, please add the rest of my concerns:

1. My biggest concern is the negative effect on our property values. Our neighborhood values have held steady. This will impact the abutting properties significantly. I would not pay \$400,000 for a house that had that in the back yard. Would you?
2. The noise is a major factor. We need to visit an existing site to know the real impact and decibel level.
3. there are wetlands on that property, where the proposed footprint is. It seems unrealistic they would build on wetlands.
4. Carcinogenic Fumes from the generator.
How can you prevent that from a diesel generator?

Sent from my U.S. Cellular® Smartphone

Ann Machado - Re: Objection to the Verizon equipment facility adjacent to Rivers Edge Drive

From: Amelia Hassler <ameliahassler@gmail.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 12/10/2015 7:28 PM
Subject: Re: Objection to the Verizon equipment facility adjacent to Rivers Edge Drive

Hi Ann,

Thanks so much for your response. There has been a lot of research and dialogue in the neighborhood since I sent you my email. And as I learn more about the proposed placement of the building on the site map (closest proximity to the neighborhood and highest most visible elevation possible) it leaves me with even greater concerns about how big and imposing a presence it will have (not just for the direct abutters but for all of us). Truly a terrible eye sore in a beautiful natural space. I'm deeply distressed.

Thanks again for your response!

Amelia

Sent from my iPhone

On Dec 10, 2015, at 2:39 PM, Ann Machado <AMACHADO@portlandmaine.gov> wrote:

Amelia -

I have passed your email on to the applicant, Verizon so they can address your concerns at the next meeting. The Board will also be receiving your email before the meeting. When we know the date of the next meeting, we will notify you. This email has also become part of the permanent record of the appeal.

Ann Machado

Ann Machado
 Zoning Administrator
 Planning & Urban Development
 Portland, Maine
 (207) 874-8709

>>> Amelia Hassler <ameliahassler@gmail.com> 12/6/2015 9:44 PM >>>

Hi Ann,

My name is Amelia Hassler and I purchased a home at 93 River's Edge Drive a little over a year ago. I'm writing with great concern about the proposed zoning change for the Verizon equipment facility. I wanted to formally express my opposition to the possibility of allowing Verizon to build a large commercial facility in such close proximity to our residential

neighborhood.

When I bought into this neighborhood just over a year ago, I carefully researched the zoning of the directly adjacent areas, specifically looking for whether or not the residential / natural woodland surroundings would remain intact (hence the property value and aesthetic of the neighborhood would remain intact). Unlike some of my neighbors who bought 10 or more years ago, I paid top dollar for my property... and I'm deeply concerned that the looming presence of such a large industrial commercial facility so close to our own residential properties will significantly reduce the property values, causing me to lose money on such large personal investment.

This is such a special quiet beautiful neighborhood of Portland that has a unique protected feel to it, and I'm greatly saddened and worried that this proposed equipment facility will have an adverse impact for all of us who live here. The idea of a big 'for profit' company swooping in and being able to change the rules, and in doing so disrupt the quality and value of our personal properties, is deeply upsetting.

I've had nothing but positive experiences in the past with your zoning board and the city of Portland in general... so I appeal to you to please not allow commercial use of this land... to not allow big businesses like Verizon to intrude on the protected residential neighborhoods of Portland (where the impact to the individual is deeply felt).

Thank you for your time and your understanding.

Sincerely,

Amelia Hassler
93 Rivers Edge Drive

Ann Machado - Concerns RE: Verizon's October 20, 2015, Conditional Use Appeal Application for 1877 Congress Street, Portland

From: "Raelene Gardner" <raeleneg@maine.rr.com>
To: <amachado@portlandmaine.gov>, <edsuslovic@portlandmaine.gov>, <estrimlin...
Date: 12/20/2015 9:16 AM
Subject: Concerns RE: Verizon's October 20, 2015, Conditional Use Appeal Application for 1877 Congress Street, Portland
CC: "'Charlton Smith'" <charltonsmith@mac.com>, <stroudwatervillageassociati...

Hi again Ann,

I sent you the email below on Dec10 and never received a confirmation from you.

I did receive a confirmation for a previous email re: concerns about the Verizon zoning appeal on Congress St.

Not sure why you would not receive this one or if I am only allowed one "concern" letter.

Please add the rest of my concerns below:

1. My biggest concern is the negative effect on our property values.

Our neighborhood values have held steady. This will impact the abutting properties significantly.

I would not pay \$400,000 for a house that had that in the back yard. Would you?

2. The noise is a major factor. We need to visit an existing site to know the real impact and decibel level.

3. there are wetlands on that property, where the proposed footprint is. It seems unrealistic they could build on wetlands.

4. Carcinogenic Fumes from the generator.

Thank you,

Raelene Gardner

(207) 775-0375 h

(207) 408-1626 c

<mailto:raeleneg@maine.rr.com>

Ann Machado - RE: Date for ZBA meeting for Verizon equipment shelter

From: "Galardo, Barbara (Portland, ME)" <bgalardo@fairpoint.com>
To: AMACHADO@portlandmaine.gov
Date: 12/28/2015 8:12 AM
Subject: RE: Date for ZBA meeting for Verizon equipment shelter

Unless someone can provide another definition of "Utility" per the City or State, Verizon is not a Utility Provider. Therefore, they cannot build a "substation". Please see the definition of a Public Utility and a Telephone Utility per the Maine Statutes that govern telecommunications below. Verizon sold its "public utility" to FairPoint, Inc. in March 2008. (Lots of Folks still refer to FairPoint as Verizon). In addition to the rules cited below, the Maine Public Utility Commission website does not show Verizon as a Maine Telephone Utility.

Title 35-A: PUBLIC UTILITIES Part 1 Chapter 1

§102. Definitions

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area. "Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B.

19. Telephone utility. "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation inside this State. "Telephone utility" also includes a dark fiber provider. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

Barbara Galardo

From: Ann Machado [mailto:AMACHADO@portlandmaine.gov]
Sent: Monday, December 21, 2015 8:36 AM
To: pjhaskell@aol.com; dpeaco@daymarkea.com; Galardo, Barbara (Portland, ME); amelaihassler@gmail.com; byarrison@gmail.com; michael.rogers66@gmail.com; Stroudwater Village Association Board of Trustees; bartholomewbill@yahoo.com
Subject: Date for ZBA meeting for Verizon equipment shelter

I just wanted to let you know that Verizon is planning to come back before the Zoning Board of Appeals on Thursday, January 21, 2016.

Ann Machado

Ann Machado
Zoning Administrator
Planning & Urban Development
Portland, Maine
(207) 874-8709

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Ann Machado - Statement from Stroudwater Village Association regarding Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland

From: Stroudwater Village Association Board of Trustees
<stroudwatervillageassociation@gmail.com>
To: <amachado@portlandmaine.gov>
Date: 12/3/2015 12:26 PM
Subject: Statement from Stroudwater Village Association regarding Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>

Hello Ann, the SVA may not be able to send a representative in person tonight, so please read this statement into the record from the SVA.

Thank you!

-Dan Koloski, SVA President

TO: Ann Machado on behalf of Zoning Board of Appeals, City of Portland

CC: Councilor Ed Suslovic

FROM: Stroudwater Village Association

RE: Statement from Stroudwater Village Association regarding Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland

DATE: 12/3/2015

The SVA requests that the vote on the Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland be tabled until at least January 2015 so that our residents have time to evaluate the proposal, both on its own and in the context of other proposed nearby activity in the neighborhood.

It's important to note that the SVA did not receive any notice of this meeting, but was in fact alerted to it by watchful residents only on Monday November 30. As such, we have not had time to adequately collect feedback from residents.

Questions specific to the proposal that we would like to discuss with the applicant include:

- * Proximity of the building to residences in the River's Edge neighborhood.
- * Expected amount of noise and light from the generator facility (related to the previous point)
- * Ensuring the rest of the parcel remains green space and/or residential development, and that this is not a prelude to a zoning conversion request or cell tower proposal

In terms of the larger context, as the Zoning office is aware, the neighborhood is currently involved in an active discussion about the proposed re-zoning of the nearby Elks Club property from residential R-2 to commercial O-P. We have repeatedly requested that the city work with us to think about the bigger picture for the neighborhood before making these kinds of changes, especially in light of the housing shortage in Portland (although not a zoning conversion, this proposal would also remove potential housing stock from the inventory). As such, we would like to make sure that this specific proposal is evaluated in the context of the other discussions happening in the neighborhood.

The bottom line is that this proposal would benefit from some more time to evaluate, and so **the SVA requests that the vote on the Verizon Wireless Conditional Use Application, 1877 Congress Street, Portland be tabled until at least January 2015 so that our residents have time to evaluate the proposal, both on its own and in the context of other proposed nearby activity in the neighborhood.**

Thank you for your consideration.

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.stroudwatervillage.org> and
<http://www.livinginportland.org/stroudwater.htm>

Find us on Facebook at <https://www.facebook.com/StroudwaterVillageAssociation>

Verrill Dana^{LLP}

Attorneys at Law

KELLY B. BODEN
PARTNER
kboden@verrilldana.com
Direct: 207-253-4472

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

January 4, 2016

Via Hand Delivery

City of Portland Zoning Board of Appeals
c/o Ann Machado
389 Congress St., Room 315
Portland, ME 04101

Re: Conditional Use Application—Supplemental Information
Proposed Verizon Wireless Facility

Dear Zoning Board of Appeals:

Enclosed please find eleven (11) copies of additional information requested by the Zoning Board of Appeals during the December 3, 2015 meeting. Specifically, the Board requested Verizon Wireless to submit information regarding the sound output from the proposed diesel generator and visual simulations of the proposed project.

Generator

Enclosed please find spec sheets estimating sound output from the generator proposed here. The estimated sound output from a diesel generator is 77 dBA at a distance of 23 feet (using the proposed Level 2 Sound Enclosure described herein), which is the property line. The projected sound output is 64 dBA at 100 feet.¹ Please note that the sound estimates are based on a generator located on a 100 foot concrete pad. Here, the generator will be on a significantly smaller pad with intervening vegetation, which will further reduce the sound at the property line and beyond.

The Board also asked for some comparative sound information. Below are some common examples:

Dishwasher: 50 dBA
Air Conditioner: 60 dBA
Vacuum cleaner: 75 dBA
Garbage Disposal: 80 dBA
Lawn Mower: 90 dBA

¹ The sound levels reflected in the attached specs are projected for a gas generator. A 3 dBA upward adjustment is appropriate for the proposed diesel generator and it has been included in the numbers presented here.

January 4, 2016

Page 2

Emergency Vehicle Siren: 115 dBA

Jet engine at takeoff: 140 dBA

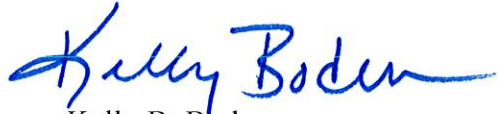
Visual Assessment

Enclosed are visual simulations depicting the proposed generator building and access drive. In addition, the consultant included photographs from River's Edge drive and Heritage Court showing the approximate location of the building from those locations.

We respectfully request that the Zoning Board of Appeals consider this additional information and the entirety of Verizon's application at its January 21, 2016 meeting. Please do not hesitate to contact the project manager, Matt Burke (at 508-930-0974), or me should you have any questions.

Thank you.

Very truly yours,



Kelly B. Boden

KBB/mtt

Enclosures

cc: Matt Burke, Tower Resource Management, Inc.

SD135 SD150

Liquid Cooled Diesel Engine Generator Sets

Standby Power Rating

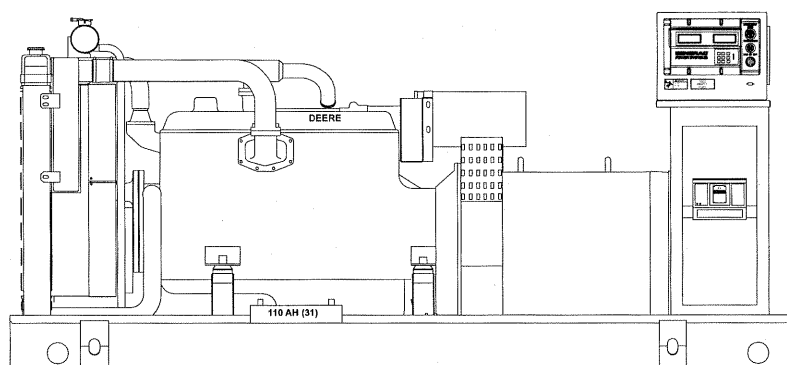
135KW 60Hz

150KW 60 Hz

Prime Power Rating

120KW 60 Hz

135KW 60 Hz



Power Matched

GENERAC 6.8 DTA ENGINE

Turbo-Charged, Aftercooled
EPA Tier III Compliant

FEATURES

■ **INNOVATIVE DESIGN & PROTOTYPE TESTING** are key components of GENERAC'S success in "IMPROVING POWER BY DESIGN." But it doesn't stop there. Total commitment to component testing, reliability testing, environmental testing, destruction and life testing, plus testing to applicable CSA, NEMA, EGSA, and other standards, allows you to choose GENERAC POWER SYSTEMS with the confidence that these systems will provide superior performance.

■ **TEST CRITERIA:**

- ✓ PROTOTYPE TESTED
- ✓ SYSTEM TORSIONAL TESTED
- ✓ ELECTRO-MAGNETIC INTERFERENCE
- ✓ NEMA MG1 EVALUATION
- ✓ MOTOR STARTING ABILITY
- ✓ SHORT CIRCUIT TESTING
- ✓ UL 2200 COMPLIANCE AVAILABLE

■ **MICROPROCESSOR CONTROLLED VOLTAGE AND FREQUENCY REGULATION.** Digital microprocessor control of engine and generator functions and protective systems integrated

into a single controller for unparalleled performance and reliability. LCD display of all engine and generator functions and remote monitoring via GenLink® software.

■ **SINGLE SOURCE SERVICE RESPONSE** from Generac's dealer network provides parts and service know-how for the entire unit, from the engine to the smallest electronic component. You are never on your own when you own a GENERAC POWER SYSTEM.

■ **ECONOMICAL DIESEL POWER.** Low cost operation due to modern diesel engine technology. Better fuel utilization plus lower cost per gallon provide real savings.

■ **LONGER ENGINE LIFE.** Generac heavy-duty diesels provide long and reliable operating life.

■ **GENERAC TRANSFER SWITCHES AND ACCESSORIES.** Long life and reliability is synonymous with GENERAC POWER SYSTEMS. One reason for this confidence is that the GENERAC product line includes its own transfer systems, accessories, and controls for total system compatibility.

GENERAC®

APPLICATION & ENGINEERING DATA

SD135/SD150

GENERATOR SPECIFICATIONS

TYPE Four-pole, revolving field
ROTOR INSULATION Class H
STATOR INSULATION Class H
TOTAL HARMONIC DISTORTION <3.0%
TELEPHONE INFLUENCE FACTOR (TIF) <50
ALTERNATOR Self-ventilated and drip-proof
BEARINGS (PRE-LUBED & SEALED) 2
COUPLING Flexible Disc
LOAD CAPACITY (STANDBY) 100%

NOTE: Emergency loading in compliance with NFPA 99, NFPA 110. Generator rating and performance in accordance with ISO8528-5, BS5514, SAE J1349, ISO3046 and DIN6271 standards.

EXCITATION SYSTEM

PERMANENT MAGNET PILOT EXCITER Eighteen-pole exciter ✓
Magnetically coupled DC current ✓
Mounted outboard of main bearing ✓
REGULATION H100 Controller Digital ✓
3 Phase Sensing, $\pm 1\%$ regulation ✓

GENERATOR FEATURES

- ☐ Revolving field heavy duty generator
- ☐ Directly connected to the engine
- ☐ Operating temperature rise 120 °C above a 40 °C ambient
- ☐ Insulation is Class H rated at 150 °C rise
- ☐ All prototype models have passed three phase short circuit testing

CONTROL PANEL FEATURES

- ☐ TWO FOUR LINE LCD DISPLAYS READ:
 - Voltage (all phases)
 - Power factor
 - kVAR
 - Engine speed
 - Run hours
 - Fault history
 - Coolant temperature
 - Low oil pressure shutdown
 - Overvoltage
 - Low coolant level
 - Not in auto position (flashing light)
 - ATS selection
 - Current (all phases)
 - kW
 - Transfer switch status
 - Low fuel pressure
 - Service reminders
 - Oil pressure
 - Time and date
 - High coolant temperature shutdown
 - Overspeed
 - Low coolant level
 - Exercise speed
- ☐ INTERNAL FUNCTIONS:
 - FT function for alternator protection from line to neutral and line to line short circuits
 - Emergency stop
 - Programmable auto crank function
 - 2 wire start for any transfer switch
 - Communicates with the Generac HTS transfer switch
 - Built-in 7 day exerciser
 - Adjustable engine speed at exerciser
 - RS232 port for GenLink® control
 - RS485 port remote communication
 - Canbus addressable
 - Governor controller and voltage regulator are built into the master control board
 - Temperature range -40 °C to 70 °C

ENGINE SPECIFICATIONS

MAKE DEERE
MODEL See Exhaust Emission Sheet
ENGINE FAMILY First digit is Cert. Yr. (i.e. 7, 8, 9) _JDXL06.8104
CYLINDERS 6 in-line
DISPLACEMENT 6.8 Liters (415 cu. in.)
BORE 106 mm (4.19 in.)
STROKE 127 mm (5.0 in.)
COMPRESSION RATIO 17.0:1
INTAKE AIR Turbocharged, Aftercooled
NUMBER OF MAIN BEARINGS 7
CONNECTING RODS 6-Carbon Steel
CYLINDER HEAD Cast Iron with Overhead Valve
PISTONS 6-Heat Resistant Aluminum Alloy
CRANKSHAFT Case Hardened, Die Forged, Carbon Steel

VALVE TRAIN

LIFTER TYPE Solid
INTAKE VALVE MATERIAL Special Heat Resistant Steel
EXHAUST VALVE MATERIAL Special Heat Resistant Steel
HARDENED VALVE SEATS Replaceable
VALVES PER CYLINDER 2

ENGINE GOVERNOR

☐ ELECTRONIC Standard
FREQUENCY REGULATION, NO-LOAD TO FULL LOAD ... Isochronous
STEADY STATE REGULATION $\pm 0.25\%$

LUBRICATION SYSTEM

TYPE OF OIL PUMP Forced Feed Lubrication w/ Oil Pump
OIL FILTER Full Flow, Cartridge
CRANKCASE CAPACITY 22.7 Liters (6.0 U.S. gallons)

COOLING SYSTEM

TYPE OF SYSTEM Pressurized, closed recovery
WATER PUMP Pre-lubed, Self-Sealing
TYPE OF FAN Pusher
NUMBER OF FAN BLADES 7
DIAMETER OF FAN 650 mm (26.0 in.)
COOLANT HEATER 120V, 1800 W

FUEL SYSTEM

FUEL #2D Fuel (Min Cetane #40)
(Fuel should conform to ASTM Spec.)
FUEL FILTER 10 Micron
FUEL INJECTION PUMP ZEXEL
FUEL PUMP Mechanical
INJECTORS Multi-hole, nozzle type
ENGINE TYPE Direct injection
FUEL LINE (Supply) 9.53 mm (0.375 in.)
FUEL RETURN LINE 9.53 mm (0.375 in.)

ELECTRICAL SYSTEM

BATTERY CHARGE ALTERNATOR 45 Amps at 24 V
STARTER MOTOR 24 V
RECOMMENDED BATTERY 2-12V, 31
GROUND POLARITY Negative

Rating definitions - Standby: Applicable for supplying emergency power for the duration of the utility power outage. No overload capability is available for this rating. (All ratings in accordance with BS5514, ISO3046 and DIN6271). Prime (Unlimited Running Time): Applicable for supplying electric power in lieu of commercially purchased power. Prime power is the maximum power available at variable load. A 10% overload capacity is available for 1 hour in 12 hours. (All ratings in accordance with BS5514, ISO3046, ISO8528 and DIN6271).



SD135/SD150

OPERATING DATA

	STANDBY				PRIME			
	SD135		SD150		SD135		SD150	
GENERATOR OUTPUT VOLTAGE/KW-60Hz	kW	Rated AMP	kW	Rated AMP	kW	Rated AMP	kW	Rated AMP
120/240V, 1-phase, 1.0 pf	135	563	150	625	120	500	135	563
120/208V, 3-phase, 0.8 pf	135	468	150	520	120	416	135	468
120/240V, 3-phase, 0.8 pf	135	406	150	451	120	361	135	406
277/480V, 3-phase, 0.8 pf	135	203	150	226	120	180	135	203
600V, 3-phase, 0.8 pf	135	162	150	180	120	144	135	162
NOTE: Consult your Generac dealer for additional voltages.								
MOTOR STARTING								
Maximum KVA with 35% instantaneous voltage dip								
with standard alternator; 60 Hz	208/240V	400/480V	208/240V	400/480V	208/240V	400/480V	208/240V	400/480V
with optional alternator; 60 Hz	348	464	348	464	348	464	348	464
	490	653	490	653	490	653	490	653
FUEL								
Fuel consumption—60 Hz								
Load	25%	50%	75%	100%	25%	50%	75%	100%
kW @ %	33.75	67.5	101.25	135	37.5	75	112.5	150
gal./hr.	2.87	5.45	7.95	9.89	3.11	5.89	8.60	10.83
Liters/Hr.	10.85	20.61	30.11	37.43	11.75	22.30	32.55	40.99
	2.29	4.36	6.36	7.91	2.48	4.71	6.88	8.66
	8.68	16.49	24.09	29.94	9.40	17.84	26.04	32.79
COOLING								
Coolant capacity								
System - lit. (US gal.)	42.4 (11.2)		42.4 (11.2)		42.4 (11.2)		42.4 (11.2)	
Engine - lit. (US gal.)	13.0 (3.4)		13.0 (3.4)		13.0 (3.4)		13.0 (3.4)	
Radiator - lit. (US gal.)	29.4 (7.8)		29.4 (7.8)		29.4 (7.8)		29.4 (7.8)	
Coolant flow/min.	265 (70)		265 (70)		265 (70)		265 (70)	
60 Hz - lit. (US gal.)	263,000		293,000		211,200		234,000	
Heat rejection to coolant	259 (9,128)		259 (9,128)		259 (9,128)		259 (9,128)	
Inlet air								
60 Hz - m ³ /min. (cfm)	60 (140)		60 (140)		60 (140)		60 (140)	
Max. operating air temp onto radiator								
*see note °C (°F)	50 (122)		50 (122)		50 (122)		50 (122)	
Max. operating ambient temp								
*see note °C (°F)	0.5		0.5		0.5		0.5	
Max. external pressure drop on rad								
in. H ₂ O								
COMBUSTION AIR REQUIREMENTS								
Flow at rated power	12.5 (442.0)		14.5 (512.3)		10.0 (353.6)		11.7 (414.8)	
60 Hz - m ³ /min. (cfm)								
EXHAUST								
Exhaust flow at rated output	36.8 (1301)		42.7 (1508)		28.6 (1009)		33.5 (1184)	
60 Hz - m ³ /min. (cfm)								
Max recommended back pressure	5.1 (1.5)		5.1 (1.5)		5.1 (1.5)		5.1 (1.5)	
Kpa (Hg)	460 (860)		476 (890)		435 (815)		446 (835)	
Exhaust temp at rated output	127 (5.0)		127 (5.0)		127 (5.0)		127 (5.0)	
°C (°F)								
Exhaust outlet size								
mm (in)								
ENGINE								
Rated RPM	1800		1800		1800		1800	
60 Hz								
HP (@ rated kW)	208		229		165		183	
60 Hz								
Piston speed (mean)	7.6 (1500)		7.6 (1500)		7.6 (1500)		7.6 (1500)	
60 Hz - m/sec. (ft./min.)								
BMEP	249		221		177		200	
60 Hz - psi								
DERATION FACTORS								
Temperature								
2.4% for every 10°C above - °C	40		40		40		40	
4.1% for every 10°F above - °F	104		104		104		104	
Altitude								
0.8% for every 100 m above - m	1525		1066		1525		1066	
2.6% for every 1000 ft. above - ft.	5000		3500		5000		3500	

* Note: Values given are maximum temperatures to which power adjustments can be applied. Consult your Generac Power Systems representative if operating conditions exceed these maximums.

STANDARD ENGINE & SAFETY FEATURES

SD135/SD150

- High Coolant Temperature Automatic Shutdown
- Low Coolant Level Automatic Shutdown
- Low Oil Pressure Automatic Shutdown
- Overspeed Automatic Shutdown (Solid-state)
- Crank Limiter (Solid-state)
- Oil Drain Extension
- Radiator Drain Extension
- Factory-Installed Cool Flow Radiator
- Closed Coolant Recovery System
- UV/Ozone Resistant Hoses
- Rubber-Booted Engine Electrical Connections
- Secondary Fuel Filter
- Fuel Lockoff Solenoid

- Stainless Steel Flexible Exhaust Connection
- Battery Charge Alternator
- Battery Cables
- Battery Tray
- Vibration Isolation of Unit to Mounting Base
- 24 Volt, Solenoid-activated Starter Motor
- Air Cleaner
- Fan Guard
- Control Console
- Coolant Heater
- Isochronous Governor
- Radiator Duct Adapter

OPTIONS

■ OPTIONAL COOLING SYSTEM ACCESSORIES

- Coolant Heater 208/240VAC

■ OPTIONAL FUEL ACCESSORIES

- Flexible Fuel Lines
- UL Listed Fuel Tanks
- Base Tank Fuel Alarms
- Primary Fuel Filter

■ OPTIONAL EXHAUST ACCESSORIES

- Critical Exhaust Silencer (Standard on enclosed gensets)

■ OPTIONAL ELECTRICAL ACCESSORIES

- Battery, 12 Volt, 135 A.H., 4D (2 req'd)
- Battery, 12 Volt, 225 A.H., 8D (2 req'd)
- 2A Battery Charger
- 10A Dual Rate Battery Charger
- Battery Heater

■ OPTIONAL ALTERNATOR ACCESSORIES

- Alternator Upsizing
- Alternator Strip Heater
- Alternator Tropicalization
- Voltage Changeover Switch
- Main Line Circuit Breaker

■ CONTROL CONSOLE OPTIONS

- Digital Controller H-100 (Bulletin 0172110SBY)

■ ADDITIONAL OPTIONAL EQUIPMENT

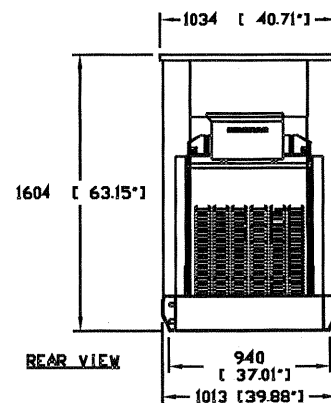
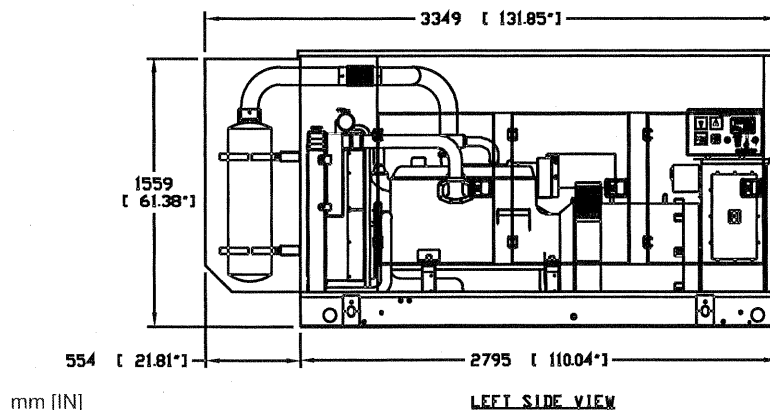
- Automatic Transfer Switch
- 3 Light Remote Annunciator
- 5 Light Remote Annunciator
- 20 Light Remote Annunciator
- Remote Relay Panels
- Unit Vibration Isolators
- Oil Make-Up System
- Oil Heater
- 5 Year Warranties
- Export Boxing
- GenLink® Communications Software

■ OPTIONAL ENCLOSURES

- Weather Protective
- Sound Attenuated
- Aluminum and Stainless Steel
- Enclosed Muffler

Distributed by:

Design and specifications subject to change without notice. Dimensions shown are approximate. Contact your Generac dealer for certified drawings. DO NOT USE THESE DIMENSIONS FOR INSTALLATION PURPOSES.



GENERAC

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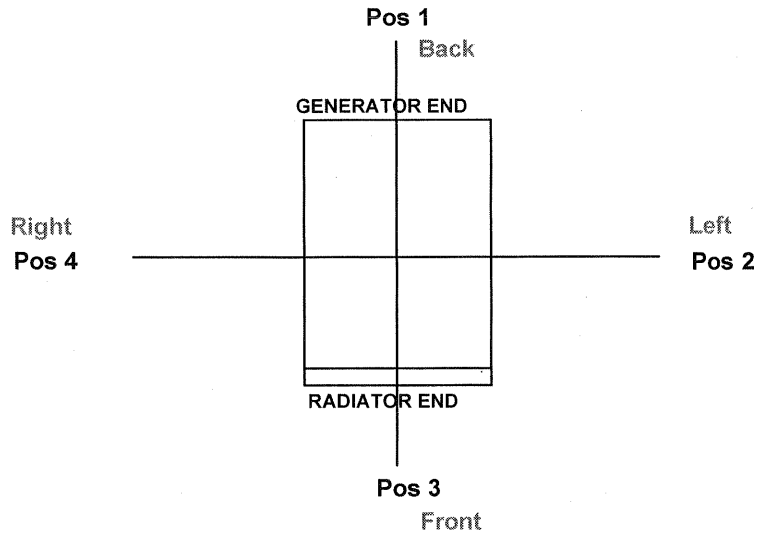
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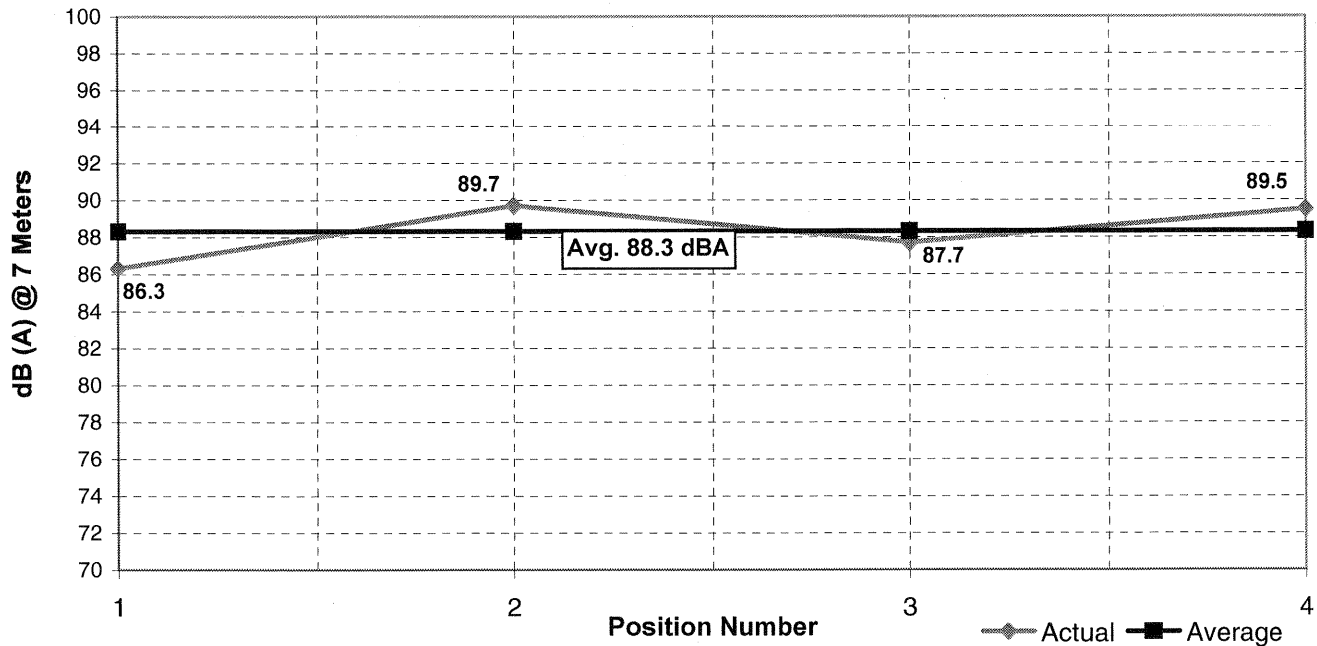
Sound Test Results

Genset: SD150 6.8L John Deere

Enclosure: Open Set (No Enclosure)



Measured Sound Levels - 60 Hz



Notes:

1. All positions 23 ft (7M) from side faces of generator set.
2. Generator operating at full load.
3. Test conducted on a 100 foot diameter asphalt surface.

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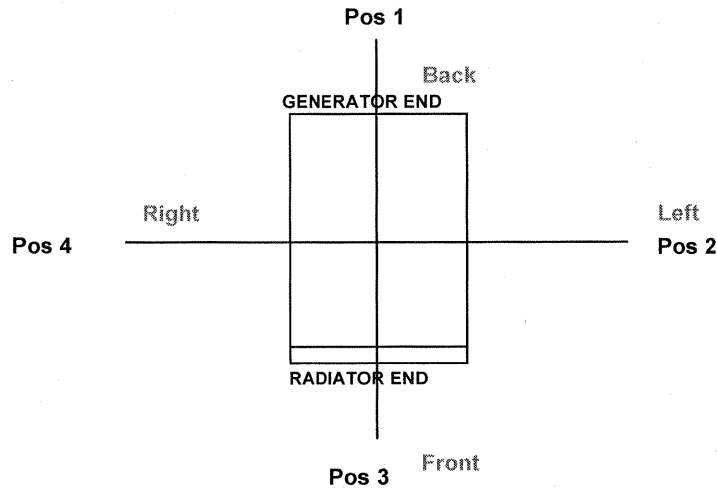
Sound Test Results

Genset:

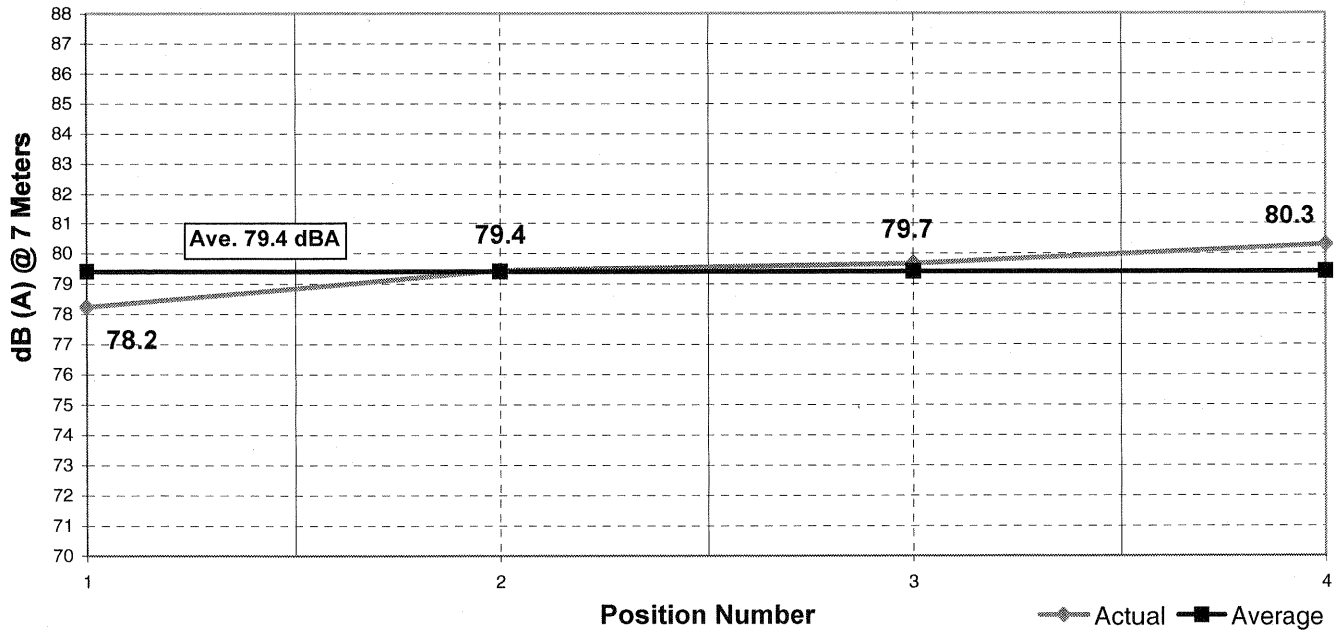
6.8L John Deere 150 kW

Enclosure:

Sound Attenuated Enclosure



Measured Sound Levels - 60 Hz



Notes:

1. All positions 23 ft (7M) from side faces of generator set.
2. Generator operating at full load.
3. Test conducted on a 100 foot diameter asphalt surface.

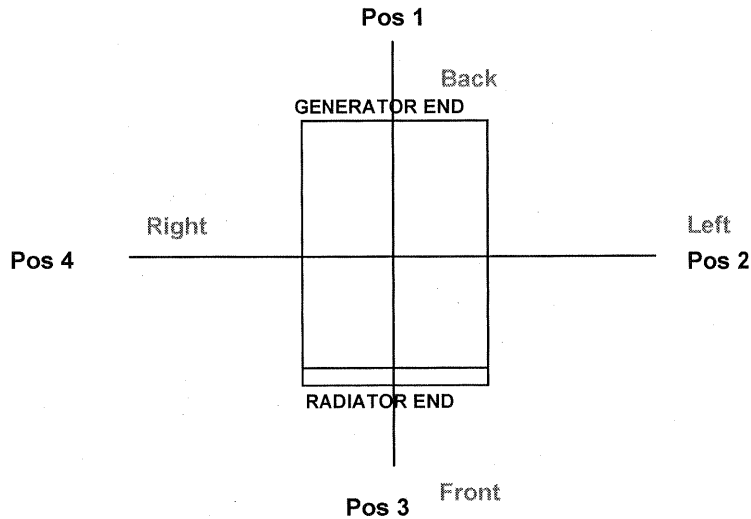
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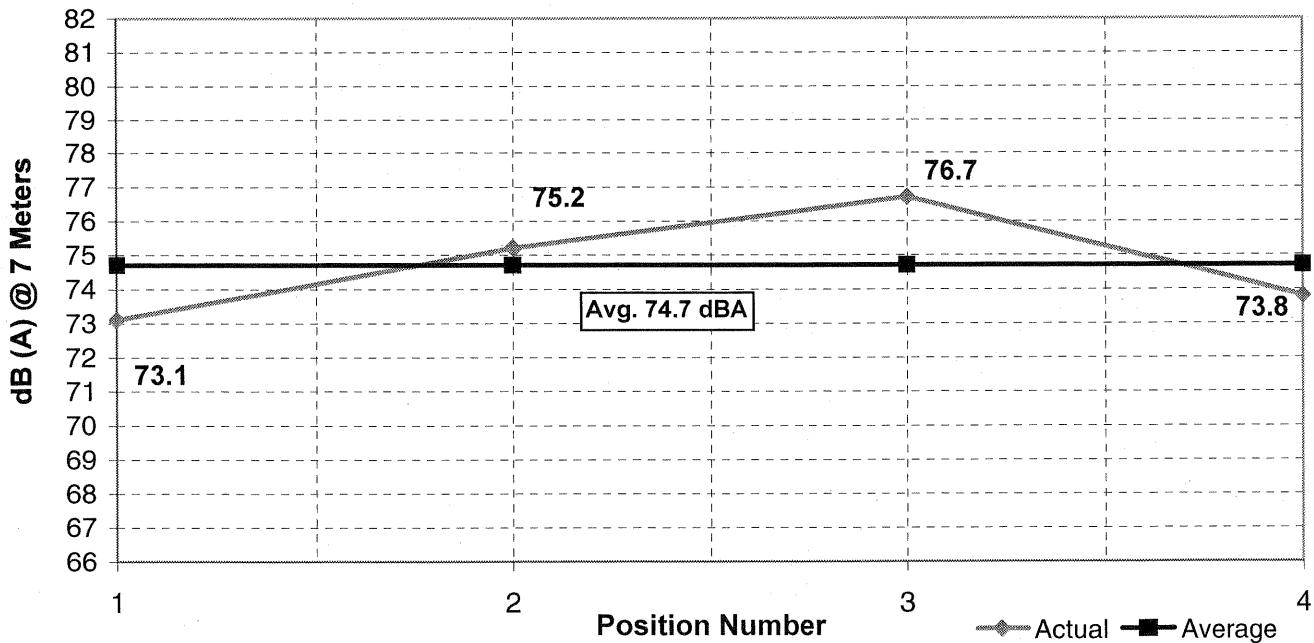
Sound Test Results

Genset: 6.8L John Deere 150 kW

Enclosure: Sound Attenuated Level 2A



Measured Sound Levels - 60 Hz



Notes:

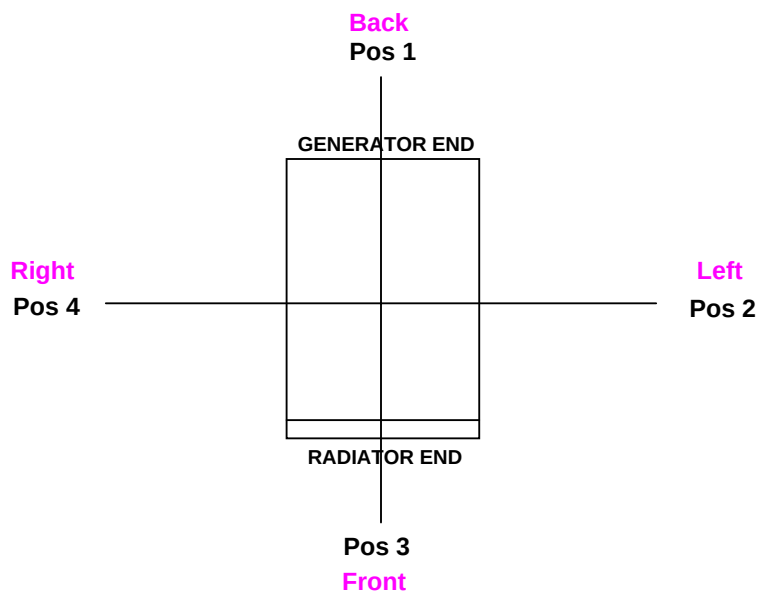
1. All positions 23 ft (7M) from side faces of generator set.
2. Generator operating at full load.
3. Test conducted on a 100 foot diameter asphalt surface.



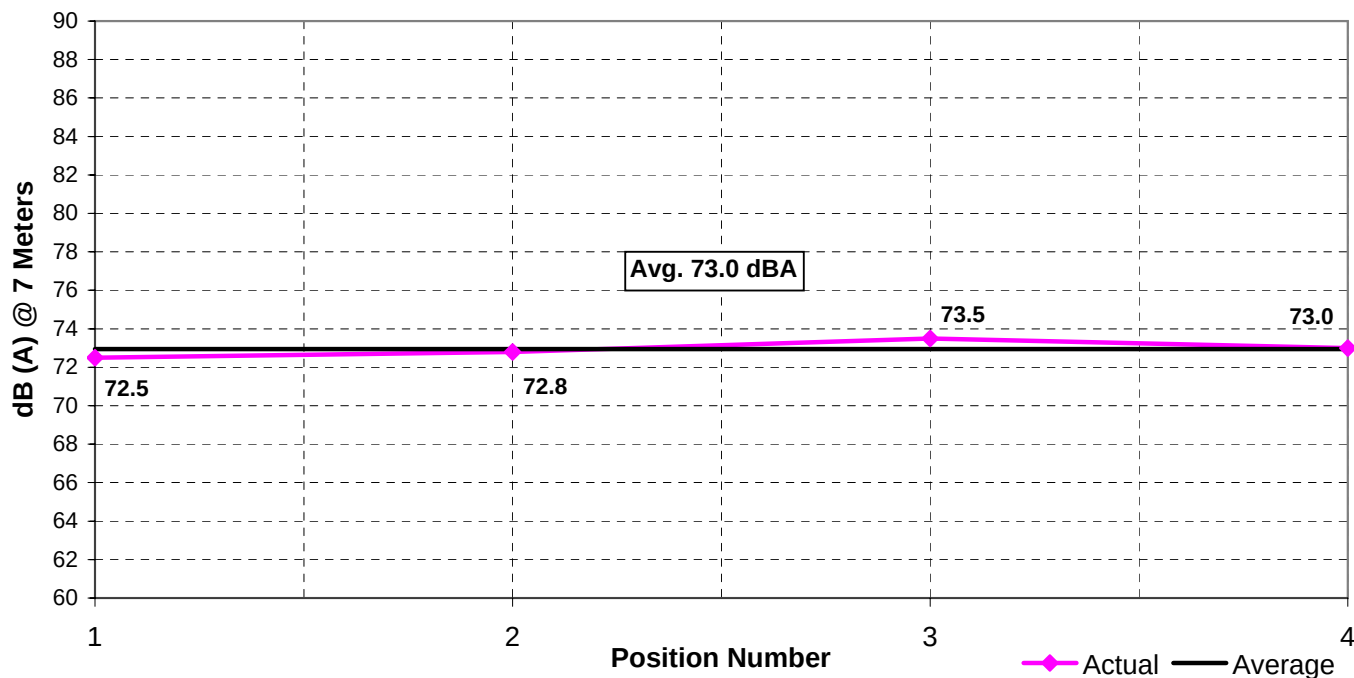
Sound Test Results

Genset: SD150 6.7L Iveco

Enclosure: Sound Attenuated, Level 2



Measured Sound Levels - 60 Hz



Notes:

1. All positions 23 ft (7M) from side faces of generator set.
2. Generator operating at full load.
3. Test conducted on a 100 foot diameter asphalt surface.
4. Non-enclosed sets do not include exhaust sound during testing.



Prepared For:

Verizon Wireless and Dewberry

Site Name:

Portland, ME ~ Head End

Site Address:

**1877 Congress Street
Portland, ME 04101**

Prepared By:

Caron & Associates Design

Benjamin E. Caron

301 Concord Street

Haverhill, MA 01830

(978) 360-3671

ben@cadsim.com

General Information:

The references for these simulations consisted of 18' tall poles placed at the proposed roof ridge ends at each end of the building. A 55' long rope was strung between the Ridge Poles and 5' wide by 9' long orange plastic sheets were hung from that rope to create a visual approximation of the ridgeline of the building. It is important to note that due to the existing terrain on site, the northwest ridge pole was 4.6 feet lower than the southeast ridge pole. The proposed building is shown at the correct finished grade elevation.

For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

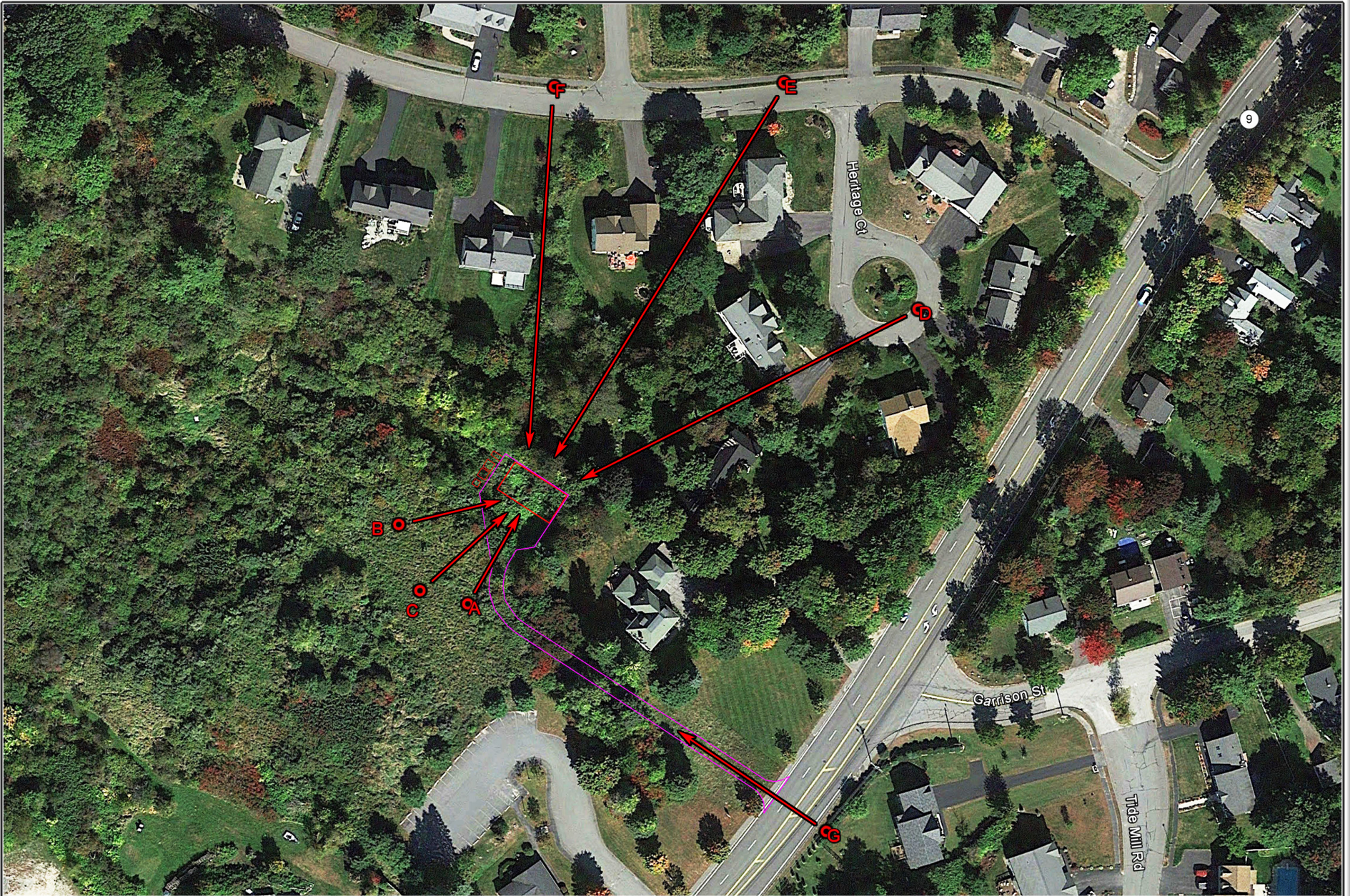
Based upon Rev2 Submittal Dwgs
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)
Photographic Renderings

Created By: Ben Caron & Mike Barreiros

CAD Caron & Associates Design

(978) 360-3671 info@cadsim.com



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location Map

Created By: Ben Caron & Mike Barreiros
CAD Caron & Associates Design
(978) 360-3671 info@cadsim.com



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Based upon Rev2 Submittal Dwg
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location A ~ 35mm ~ 102' +/- (0.02mi) Away
From on Site

Created By: Ben Caron & Mike Barreiros

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(978) 360-3671 info@cadsim.com



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Photo Location A ~ 35mm ~ 102' +/- (0.02mi) Away
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Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

**Photo Location B ~ 35mm ~ 90'+/- (0.02mi) Away
From on Site**

Created By: Ben Caron & Mike Barreiros

 **Caron & Associates Design**

(978) 360-3671 info@cadsim.com



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg's
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Based upon Rev2 Submittal Dwg
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location C ~ 35mm ~ 110' +/- (0.02mi) Away
From on Site

Created By: Ben Caron & Mike Barreiros

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Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location C ~ 35mm ~ 110' +/- (0.02mi) Away
From on Site

Created By: Ben Caron & Mike Barreiros

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For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location E ~ 85mm ~ 412' +/- (0.08mi) Away
From Near Intersection of River's Edge Drive and Heritage Court

Created By: Ben Caron & Mike Barreiros
CAD Caron & Associates Design
(978) 360-3671 info@cadsim.com



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

Photo Location F ~ 85mm ~ 334' +/- (0.06mi) Away
From Across the street from 50 River's Edge Drive

Created By: Ben Caron & Mike Barreiros

CAD Caron & Associates Design

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For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

**Photo Location G ~ 35mm ~ 54' +/- (0.01mi) Away
From Across Route 9 From Proposed Entrance**

Created By: Ben Caron & Mike Barreiros

CAD Caron & Associates Design

(978) 360-3671 info@cadsim.com



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location.

Based upon Rev2 Submittal Dwg's
by Dewberry dated: 10/20/2015

Portland, ME ~ Head End ~ (12/28/2015)

**Photo Location G ~ 35mm ~ 54' +/- (0.01mi) Away
From Across Route 9 From Proposed Entrance**

Created By: Ben Caron & Mike Barreiros

CAD Caron & Associates Design

(978) 360-3671 info@cadsim.com

David P. Silk, Esq.
dsilk@curtisthaxter.com

January 14, 2016

Sent via email to: amachado@portlandmaine.gov

City of Portland, Zoning Board of Appeals
c/o Ann Machado, Zoning Specialist,
City of Portland
Portland City Hall, Room 315
389 Congress Street
Portland, ME 04101

RE: Conditional Use Application, Verizon Wireless, 1877 Congress Street

Dear Chair Avery and Board Members:

I represent Charlton and Mary Smith, residents at 85 River's Edge in Portland. The Smiths reside in the River's Edge residential development. Their home is located in close proximity to the 1877 Congress Street property which is where Verizon Wireless seeks approval to install a 1,650 s.f. "Head End" telecommunications facility. The engineering plans Verizon Wireless submitted with its October 21, 2015 application calls the proposed structure a "Head End" facility. If the proposed Head End facility is permitted to be located at 1877 Congress Street, the Smiths will suffer a particularized injury as they will hear the proposed external industrial sized generator to be located on a 5' by 10' concrete pad and operated every single week. They will also see the proposed 55' by 30' building with a height of almost 18' housing a commercial use. This will result in a substantial diminution in value of the Smith property, along with other properties at River's Edge. Mr. Smith appeared and spoke at the Board's initial December 3, 2015 meeting on this matter.

Verizon Wireless has not provided any detail whatsoever about what will occur in the proposed 1,650 s.f. Head End facility. The applicant's October 21, 2015 cover letter submitted with the Conditional Use Application, on the first page, introductory paragraph, refers to the proposed building as a "wireless telecommunications facility." Later in the same cover letter, under "Project Description", the Head End building is described as an "equipment shelter." On the actual one page conditional use application form, as the type of conditional use proposed, Verizon Wireless states: "Utility substation/telephone electronic equipment enclosure."

As explained more fully below, Verizon Wireless is a telecommunications company that operates a wireless and fiber broadband network.¹ Verizon Wireless is not a public utility. Under the Land Use Code, only a public utility can obtain a conditional use permit to locate a “utility substation” in the R-2 residential zone. 1877 Congress Street is located entirely in the R-2 residential zone. While it is not entirely clear yet what will occur in the facility, any activity that occurs will be a commercial use because Verizon Wireless is not a public utility. Like AT&T, Sprint, and US Cellular, Verizon Wireless is a telecommunications company. What Verizon Wireless proposes, a telecommunications facility, is an expressly permitted use in the B-6 and B-7 zones and listed in those zones as a commercial use. *See* Sections 14-269 and 14-295 of the Land Use Code. Commercial uses, such as telecommunications facilities, are not however allowed in the R-2 residential zone, either as permitted or conditional uses.² Therefore the Board must deny Verizon Wireless’ conditional use application.

By its application, Verizon Wireless states that its proposed telecommunications facility constitutes a utility substation. Utility substations are conditional uses in the R-2 residential zone. Section 14-78.c.1 provides:

Utility substations, including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.³

For the Board to approve Verizon Wireless application to install the proposed Head End facility, the Board must first find that Verizon Wireless is a utility. This is so for two reasons.

First, section 14-78.c.1 permits in the R-2 residential zone “utility substations” as a conditional use, subject to suitable screening and landscaping. The general term “utility substation” is followed by specific examples plainly describing different types of public utility owned or operated substations, based on whether the utility is a sewer, water, electric or telephone utility. *See Wister v. Town of Mt. Desert*, 2009 ME 66, ¶ 17 (If an ordinance is unambiguous, plain meaning will govern.). The example given as a typical substation for a telephone utility, telephone electronic equipment enclosure, is what Verizon Wireless seeks a permit for. But Verizon Wireless is not a telephone utility.

¹ <http://www.verizon.com/about/our-company/verizon-glance>

² The purpose of the R-2 residential zone is to “provide for low-density residential development characterized by single-family homes on individual lots...”. Section 14-76.

³ Any applicant seeking conditional use approval for a utility substation to be located in the R-2 zone must also meet the standards in section 14-474. *See* section 14-78.

The Land Use Code definition of “utility substation” reinforces the requirement that to qualify as a “utility substation,” any such substation, whether it be a sewer or water pumping station, electric power substation, telephone equipment enclosure, or similar structure, must be “*owned or operated by a public utility.*” See section 14-47 for definition. So for Verizon Wireless to have standing to seek to obtain a conditional use permit for its proposed Head End facility, what Verizon Wireless also calls a “telecommunications facility”, it must first show it is a public utility. Verizon cannot make this showing because it is not a public utility.

While the term “utility” is not defined, its common definition is “public utility.”⁴ Verizon Wireless is a non-regulated facilities based wireless service provider doing business in the State of Maine. It competes with businesses such as AT&T, Sprint and US Cellular, all of which offer wireless services in the City. Verizon Wireless has not presented any information to the Board showing that it is a public utility in Maine. The information available shows that it is not.

In Maine, a “public utility” is defined by statute as follows:

“Public utility” includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. “Public utility” *does not include* the operation of a radio paging service, as that term is defined in this section, *or mobile telecommunications services...*”

35-A M.R.S. §102(13) (emphasis added).⁵

Verizon Wireless is a provider of wireless, or more specifically, “mobile telecommunications services,” and therefore, by definition, is decidedly not a “public utility.” This conclusion should be determinative as to Verizon Wireless’ status in Maine, and should end the inquiry on whether Verizon Wireless may receive the benefits associated with public utility status under the Land Use Code. By contrast, for example, FairPoint is a “public utility” under the statutory definition because it is a “telephone utility.”

A “telephone utility” is defined in the statute to include every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation

⁴ http://www.oxforddictionaries.com/us/definition/american_english/utility

⁵ The same statute defines a “Mobile telecommunications services” as a provider of telecommunications services licensed by the Federal Communications Commission for mobile use.” 35-A M.R.S. § 102(9-A). It cannot be disputed that Verizon Wireless provides telecommunications services licensed by the FCC for mobile use. For the record, Verizon Wireless is also not a mobile telecommunications service provider who has exclusive control over the radio frequency spectrum assigned by the FCC to provide mobile service to the service area. There is no evidence that Verizon Wireless possesses monopoly control over the radio frequency spectrum in its service area, which evidently includes most if not all of Maine. 35-A M.R.S. §102(13).

inside this State” excluding those entities that are excluded from the definition of “public utility,” such as a provider of mobile telecommunications services. 35-A M.R.S. §102(19). It goes without further explanation that, as a provider of mobile telecommunications services, Verizon Wireless is not a “telephone utility.”

Verizon Wireless does not hold itself as a public utility, whether in its website, advertising literature, or before the Maine Public Utilities Commission (the “Commission”), which regulates Maine public utilities under Title 35-A of the Maine Revised Statutes. Verizon Wireless is content to avoid the label “public utility” perhaps for reasons that benefit the Verizon Wireless. Because Verizon Wireless is not a “public utility” and provides wireless service the company is not currently required to seek Commission approval to provide service in Maine and is excluded from the regulation of its rates and terms of customer service and other matters which apply to public utilities in Maine. *See, e.g.,* 35-A M.R.S. § 2101 (requiring a public utility seeking to serve in a municipality to obtain a certificate of need); 35-A M.R.S. § 301(fundamental requirement imposed on public utilities under Maine law requires the utility to provide services safely and at just and reasonable rates, subject to Commission review and approval). As a non-public telecommunications provider, Verizon Wireless avoids a multitude of other Maine utility regulatory requirements regarding its services, ownership and operations.

Telephone public utilities have universal service obligations that guarantee affordable phone service to all and are subject to other rules that promote competition and consumer choice. In exchange, telephone public utilities, in common with other public utilities, are granted certain kinds of legal immunity, easements over private property and public rights of way, pole attachment rights, access to the phone number system, and the right to take property. A utility’s obligation to serve the public within a defined service territory coupled with the right to take property is why utility substations are conditional uses in all of the City’s residential zones. Without the ability to locate substation facilities in residential zones, a utility, whether it is water, sewer, gas, electric, or telephone, would be unable to meet its legal obligations to serve those living within its service territory. And as is readily observable in Portland, utility substations in residential zones in Portland are much smaller than the Verizon Wireless proposed 55’ by 30’ Head End building with a height of almost 18’.

Verizon Wireless is a wholly owned subsidiary of Verizon Communications.⁶ Board members will recall that in 2009, Verizon Communications wholly owned subsidiary, Verizon New England, Inc., sold to FairPoint Communications, Inc. its local exchange and long distance business operation in Maine.⁷ At that time Verizon New England, Inc. obtained Commission approval for the discontinuance of its “regulated telephone utility service” in Maine. *See In Re Verizon New England Inc. d/b/a Verizon Maine*, Amended Stipulation dated Dec. 21, 2007 filed

⁶ http://verizon.api.edgar-online.com/EFX_dll/EdgarPro.dll?FetchFilingHTML1?SessionID=W_C5e7_Q9z9amEN&ID=10506387

⁷ https://www.verizon.com/about/sites/default/files/Verizon_Corporate_History.pdf

in MPUC Docket No. 2007-67. That is, Verizon Communications sold its regulated telephone “public utility” business to FairPoint. Having discontinued its telephone public utility service in Maine, Verizon Communications, through its wholly owned subsidiary Verizon Wireless, cannot claim to be a public utility telephone company and call its proposed Head End telecommunications facility a “utility substation.” Verizon Wireless would need Commission approval before it could gain status as a telephone utility. There are no records of the Commission showing that such approval has been obtained.

Also, the services provided by Verizon Wireless are dissimilar to services considered utility services in Maine. The Commission has explained in the past that the “basic regulatory framework in Maine, as in most jurisdictions, is that utilities have an obligation to serve customers in defined service territories at rates that are regulated; in return, competition within utility service territories is restricted.” *Central Maine Power Company, Boralex Investigation*, Docket No. 2000-653 (April 6, 2001). “This policy is embodied in 35-A M.R.S.A. §2102, which requires Commission authority before a second utility can provide service in the territory of an existing utility.” *Id.* (referencing the Law Court’s interpretation of a public utility in *Dickinson v. Maine Public Service Co.*, 223 A.2d 435, 438-439 (Me. 1966)). By contrast, unlike FairPoint, Verizon Wireless has no obligation to serve in any particular defined area and is not the server of last resort. Unlike FairPoint, Verizon Wireless’ charges are not subject to review and approval. Verizon Wireless is not subject to the requirement that its rates be just and reasonable. Verizon Wireless does not provide monopoly services at regulated rates; rather, the company operates as one of many providers of mobile telecommunications providers (US Cellular, Sprint, AT&T, among others) in a competitive, unregulated environment.

As confirmation of the fact that Verizon Wireless is not a utility in Maine, it is not listed on the Commission’s website as a telephone utility. *See* <http://www.maine.gov/mpuc/telecom/telcos1.htm> (listing of telephone utilities authorized to do business in Maine, and other non-utility communications carriers providing telephone service as eligible telecommunications carries; *Verizon Wireless is not listed as either a telephone utility or as a providing telephone service as an eligible telecommunications carrier*).

In sum, for the proposed Head End telecommunications facility to be eligible under the R-2 residential zone conditional use standard for a “utility substation”, it must be owned or operated by a telephone public utility. Since Verizon Wireless is not telephone public utility in Maine, it lacks any basis to seek a conditional use permit to install a utility substation in the R-2 residential zone.

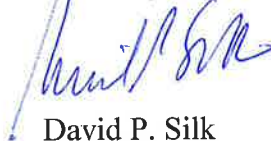
As noted above, both in the B-6 and B-7 zones, “telecommunication facilities” are permitted uses in those zones. *See* Section 14-269.a.13 295.a.15 (listing under permitted “commercial” uses, “telecommunication and broadcast and receiving facilities”) and Section 14-295.a.15 (same). The fact that “telecommunication facilities” are listed under “commercial” uses in the B-6 and B-7 zone reinforces the point that Verizon Wireless’ proposal cannot be approved

since commercial uses are prohibited in the R-2 residential zone. The applicant's cover letter to the Board, dated October 21, 2015, first page, first paragraph, makes clear that what Verizon Wireless seeks to build is a "telecommunications facility." It states: "Enclosed please find ... Application for a *proposed Verizon Wireless' wireless telecommunications facility* at 1877 Congress Street..." (emphasis added). Verizon Wireless therefore should look to locate its Head End facility in the B-6 or B-7 zones.

In sum, because Verizon Wireless is not a public utility, its proposed Head End telecommunications facility is prohibited in the R-2 residential zone. The Board should deny Verizon Wireless' permit application without reaching the merits of whether Verizon Wireless has met the specific conditional use standards set forth in section 14-474 of the Land Use Code. My clients reserve all rights on this later issue and reserve the right to provide additional material to the Board on whether Verizon Wireless' proposal complies with the conditional use standards and/or section 14-78.c.1.

Thank you for your consideration of this letter.

Sincerely,



David P. Silk

DPS/ml

Ann Machado - Statement from the Stroudwater Village Association regarding the proposed re-zoning of 1945 Congress Street (Elks Club Property) and proposed conditional use of 1877 Congress Street (back lot of Masons' property)

From: Stroudwater Village Association Board of Trustees
<stroudwatervillageassociation@gmail.com>
To: Ann Machado <amachado@portlandmaine.gov>
Date: 1/20/2016 1:10 PM
Subject: Statement from the Stroudwater Village Association regarding the proposed re-zoning of 1945 Congress Street (Elks Club Property) and proposed conditional use of 1877 Congress Street (back lot of Masons' property)

Dear Ms. Machado,

This is Dan Koloski, Stroudwater Village Association (SVA) President, writing. The SVA asks that you consider the following statement in advance of your deliberations regarding the Verizon Wireless Conditional Use proposal tomorrow evening. Note this statement also references the City Council vote on the nearby 1945 Congress Street parcel that takes place today 1/20, which is very closely related to this same issue. The SVA is requesting that both proposals be tabled or rejected at this point.

Thank you for your consideration.

-Dan Koloski, SVA President

STATEMENT from the Stroudwater Village Association regarding the proposed re-zoning of 1945 Congress Street (Elks Club Property) and proposed conditional use of 1877 Congress Street (back lot of Masons' property), January 2016.
stroudwatervillageassociation@gmail.com

This statement should be considered in addition to our prior letters to the Planning Board, Zoning Board of Appeals and City Council from January, May, July, September, October and December 2015.

The Stroudwater Village Association is grateful that the Council and Planning office have elected to begin a broader conversation about land use in the Stroudwater area, beginning January 2016. What we all need now is sufficient time for that discussion to take place.

As we have expressed throughout this process, the Stroudwater Village Association remains opposed to one-off changes of use for individual parcels in the neighborhood area, until such a comprehensive visioning process for the area is completed.

The SVA was very interested to read the memorandum entitled "1945 Congress Street Zone Change Application Supplemental Information" from Jeff Levine, Director of Planning to the Council, dated 1/8/2016 (tab 6, pp. 62-76 in the full 1/20/2016 Council agenda packet), especially the white paper entitled "Outer Congress Street Land Use" that begins on pp 72. Mr. Levine's analysis is thoughtful and represents a great first step that could lead to a broader, generally-understood vision for the area.

Stroudwater residents will, we are sure, be willing and excited to help be a productive part of that larger discussion. And in fact the SVA has several existing upcoming forums, such as our annual Pancake Breakfast in February and Annual Meeting in May, in which we would be delighted to host conversations on this subject. SVA members would also be happy to participate in other forums.

Unfortunately, our challenge this week remains that there are currently two meaningful decisions before the City that represent a de facto implementation of a vision, before we have all collectively had a chance to discuss such a vision in the first place. The first is Northland's 1945 Congress Street re-zoning proposal application (before the City Council on 1/20), and the second is Verizon Wireless' 1877 Congress Street Conditional Use application (before the Zoning Board of Appeals on 1/21). As everyone is aware, both of these specific proposals are already controversial in isolation, but are especially so when considered together and in advance of the discussion we reference above.

Neither decision is a time-sensitive issue from the City's perspective, nor is either decision the result of advocacy from existing residents. As such, these decisions should be at a minimum tabled, or the applications should be rejected at this time.

As we have expressed throughout this process, the Stroudwater Village Association remains opposed to one-off changes of use for individual parcels in the neighborhood area, until a comprehensive visioning process for the area is completed.

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.stroudwatervillage.org> and
<http://www.livinginportland.org/stroudwater.htm>

Find us on Facebook at <https://www.facebook.com/StroudwaterVillageAssociation>

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January 20, 2016

Via Electronic Mail

City of Portland
Zoning Board of Appeals
Portland City Hall, Room 315
389 Congress Street
Portland, Maine 04101

Re: Conditional Use Application, Verizon Wireless 1877 Congress Street

Dear Chair Avery and Members of the Zoning Board of Appeals:

I am writing on behalf of Verizon Wireless, the current applicant seeking a conditional use approval to construct an equipment shelter, external generator and HVAC units on a parcel of land located at 1877 Congress Street in Portland, Maine (the "Property"). By way of procedural background, the application was submitted on October 21, 2015 and first heard by the Zoning Board of Appeals ("Board") during its December 3, 2015 meeting. Supplemental information requested by the Board was submitted on January 4, 2016. On January 14, 2016, Attorney Silk submitted a challenge to the conditional use determination of utility substation as applied to Verizon Wireless. The objection was submitted on behalf of two non-abutting residents of the River's Edge neighborhood in Portland.

The City has determined that Verizon Wireless' proposed facility is a "utility substation." The Portland Land Use Code (the "Land Use Code" or the "Code") lists Utility Substations as a conditional use within the R-2 Zone. Based on the plain language of the City's Code, and reading this term in a manner consistent with the overall statutory scheme, this interpretation is correct. Further, this interpretation is not new, and has been applied to other permitted facilities. Finally, Attorney Silk's proposed interpretation leads to absurd results, and would likely render the Code in violation of federal law.

I. THE CITY HAS PROPERLY DETERMINED THAT VERIZON WIRELESS' FACILITY IS A "UTILITY SUBSTATION."

The starting point for the interpretation of any statute or ordinance is the language of the statute itself. *Hutchinson v. Cary Plantation*, 2000 ME 129, ¶10, 755 A.2d 494, 497; *Murphy v. Bd. of Envtl. Prot.*, 615 A.2d 255, 258 (Me. 1992). Unless defined, words used in an ordinance must be given their plain, common and ordinary meaning. *Hutchinson*, 2000 ME 129, ¶10, 755 A.2d at 497; *Town of Orono v. LaPointe*, 1997 ME 185, ¶11, 698 A.2d 1059, 1062; *Apex Custom*

Lease Corp. v. State Tax Assessor, 677 A.2d 530, 533 (Me. 1996). Further, terms must be interpreted in a manner that is harmonious with the overall statutory scheme and does not lead to absurd results. *See Town of Arundel v. Swain*, 374 A.2d 317, 321 (Me. 1977).

The term “utility substation” is defined in the R-2 Zone to include,

...sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.

Code Sec. 14-78(c)(1).

Verizon has proposed a structure that will house and enclose telephone electronic equipment associated with its wireless communications network.¹ Thus, based on the plain language of the Code, Verizon Wireless has proposed a “telephone electronic equipment enclosure,” which is a “utility substation.”

Attorney Silk does not dispute that Verizon Wireless has proposed a “telephone electronic equipment enclosure.” Instead, he claims that this facility is not a “utility substation” because in another section of the Code the term “utility substation” is defined as those structures operated by a “public utility” and Attorney Silk argues that Verizon Wireless is not a “public utility” regulated by the Maine Public Utility Commission. Although Attorney Silk is correct that Verizon Wireless is not regulated by the Maine PUC, this fact is irrelevant to the City’s interpretation of its Land Use Code for several reasons.²

First, although the term “public utility” is defined in Title 35-A of Maine’s Revised statutes, it is not defined in the Land Use Code. As such, the term must be given its plain, common and ordinary meaning. *Apex Custom Lease Corp.*, 677 A.2d at 533. The commonly accepted meaning of “public utility” is a business providing necessary services to the general public. *See* Utility, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “public utility”) (“A company that provides necessary services to the public, such as telephone lines and service, electricity, and water.”) Services provided by public utilities are necessary for the safety, economic vitality, and general functioning of society, such as water, electricity, telephone communication, natural gas, sewage, transportation, and other everyday necessities. Where “telephone communication” once implied hard-wired cables, the commonly accepted meaning now includes wireless telephones. Indeed, many residents rely on wireless phones as the

¹ Verizon’s structure will have no antennae and it neither emits nor receives any wireless signals.

² Attorney Silk ignores the fact that the term “utility substation” in Division 3 (R-2) does not include the phrase “public utility.” Thus, based on the plain language of the Code, utility substations in the R-2 Zone are not limited to those owned by a public utility. More importantly, however, and as discussed below, even if the phrase “public utility” is read in to the text in Division 3, Attorney Silk’s interpretation is incorrect.

exclusive source of “telephone communication” within their homes. A wireless signal, just like electricity, sewage, and transportation, has become indispensable to the general functioning of today’s society, and has thus come to be understood as a “public utility” in the ordinary or commonly accepted meaning of the term.³

Second, this interpretation of “utility substation” is appropriate because such services are necessary everywhere in the City of Portland, and so they must be allowed in a broad area of the City. Attorney Silk argues that Verizon Wireless’ building should be characterized as a “telecommunication facility,” which facilities are only allowed in the B6 and B7 Zones. These zoning districts, however, only encompass about 10% of the area of the City of Portland.⁴ This figure is significant because Attorney Silk’s interpretation of the Land Use Code would, in effect, exclude wireless telecommunications equipment from over 90 percent of the City of Portland. This interpretation would lead to absurd results, with wireless telecommunications companies being banned from providing adequate wireless service within the City.⁵

Third, the Land Use Code’s interpretation of “public utility” is not unique. Verizon Wireless recently permitted a similar structure in the Town of Wells, as a “Public Utility Facility.” Such facilities are defined in the Wells ordinance as “[a] building or structure necessary for the furnishing of publicly regulated utility services primarily within the Town of Wells...such as, but not limited to switching stations, relay stations, treatment facilities and pumping stations.” Arguably Wells’ definition, with the language “regulated utility services,” is narrower than the City’s term “utility substations.” Regardless, as wireless facilities must be permitted in broad areas of any municipality, the Town of Wells has interpreted its ordinance to include facilities such as the one proposed by Verizon Wireless.

In summary, given the clear legal standard provided by the Law Court, “public utility” must be given its commonly accepted meaning under the Land Use Code. Prudent policy design

³ The term “public utility” has been defined in Title 35-A to determine when the PUC may or may not exercise jurisdiction over a particular entity and how that entity will be regulated if jurisdiction is found. 35-A M.R.S.A. § 101. This provision has nothing to do with zoning or land use and a determination regarding the scope of the Maine PUC’s jurisdiction is not relevant to the discussion of whether a particular land use is permitted in the City’s R-2 Zone. Further, Attorney Silk is selective in his citation to other statutory provisions, ignoring zoning and land use laws and regulations that define “public utility” more broadly, to include entities that are not regulated by the Maine PUC. *See, e.g.*, 06-96 CMR Ch. 1000, § 16(5)(G) (Shoreland Zoning Regulations in reference to the installation of a public utility service: “A public utility, water district, sanitary district or any utility company of any kind...”); 30-A M.R.S.A. § 4406(3) (defining utility installation as “[a] public utility, water district, sanitary district or any utility company of any kind...”).

⁴ Zone B-6 is a narrow strip of land, less than a half of a mile long and no more than a tenth of a mile wide, tucked into the northeastern corner of the Portland peninsula. *See* Portland Zoning Map. B-7 is an area roughly a half a mile square with Marginal Way running through its center. *Id.*

⁵ Nor does the term “telecommunications facility” fit Verizon’s proposed development, as this term clearly contemplates a facility that receives and emits wireless signals. As noted above, this structure will do neither.

and precedent from other jurisdictions also supports this conclusion. Verizon satisfies the commonly accepted meaning of public utility and thus satisfies the definition of “utility substation” within the R-2 Zone. Verizon’s structure is precisely an enclosure of telephone electronic equipment and is, therefore, a lawfully permitted conditional use within the R-2 Zone.

II. IF THE CITY ADOPTED ATTORNEY SILK’S INTERPRETATION OF THE LAND USE CODE, THE CITY’S CODE WOULD BE IN VIOLATION OF FEDERAL LAW.

The Federal Telecommunications Act of 1996 states in relevant part, that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -- shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C.A. § 332(a)(7)(B)(i) and (II).

As noted above, Attorney Silk argues that Verizon has proposed a “telecommunication facility,” not a utility substation and, therefore, this facility is not permitted except in the B-6 and B-7 Zones. Such an interpretation would prohibit wireless companies from installing equipment in nearly every area of the City, except those small zones. The effect of such an interpretation would be that the City’s Code would “prohibit or have the effect of prohibiting the provision of personal wireless services” within the City and would, therefore, violate the Telecommunications Act. *See Davis v. SBA Towers II, LLC*, 2009 ME 82, ¶3, 979 A.2d 86, 90 (“no ordinance may prohibit, or effectively prohibit” telecommunications facilities or the providing of telecommunication services). Local ordinances should not be interpreted in a manner that would render them unlawful or unconstitutional.

Nor is it necessary to do so. It is clear that the City of Portland has issued permits for numerous wireless facilities outside the B-6 and B-7 Zones. Just recently, in October of last year, the Board of Appeals issued a conditional use permit for a Verizon Wireless facility consisting of a 100 foot tall flagpole tower and related equipment located at the Grace Baptist Church on 476 Summit Street, Portland, Maine. The Grace Baptist Church is located in the R-2 Zone and the facility was permitted as a “utility substation.” Not only would Attorney Silk’s interpretation violate federal law, but it contradicts the City’s practice of regulating and permitting these important facilities.

In conclusion, for the foregoing reasons, we contend that the City’s characterization of the proposed Verizon Wireless facility as a “utility substation,” as that term is defined and used in the City’s Land Use Code is proper—and the only proper—interpretation.

Thank you and we look forward to continuing our discussion of this project with the Board.

Very truly yours,


Kelly B. Boden

cc: David Silk, Esq.