



City of South Portland

829 Sawyer Street, South Portland, Maine - 04106

Phone: 207-767-7603

E-Mail: code@southportland.gov

NOTICE OF VIOLATION

March 28, 2025

**ROMAN CATHOLIC BISHOP OF PORTLAND
510 OCEAN ST
PORTLAND, ME 04103**

**PORTLAND INTERNATIONAL JETPORT
947 WESTBROOK ST
PORTLAND, ME 04102**

**PORTLAND INTERNATIONAL JETPORT
C/O CITY OF PORTLAND
389 CONGRESS ST
PORTLAND, ME 04101**

**RE: 36 DAWSON ST Parcel No.: 042-0000-072-
Violation Number: 25-0006
Violation Date: January 30, 2025**

This is to inform you that a Code Enforcement Officer has inspected the above referenced property and a violation(s) of the ordinances of the City of South Portland exists. The violation(s) are as follows:

VIOLATION 1

Code Book: South Portland Code of Ordinances - **Code Title:** Ch. 27 Zoning, ARTICLE XXI. Tree Protection - **Code Section:** Sec. 27-2103.

Ordinance: Sec. 27-2103. Applicability.

(b) Tree Protection Approval Required.

The following projects shall require a Tree Protection Approval prior to conducting Tree Removal of Protected Trees:

- 1) Projects subject to Planning Board review. All projects that require Planning Board approval, other than those specifically identified in Sec. 27-2103(a) above, require Tree Protection Approval.
 - (a) If the project is a subdivision without the construction of structures, the subdivision application

shall identify the proposed or future building envelopes. Any Tree Removal of Protected Trees caused by (i) the creation of the subdivision, (ii) the construction of necessary improvements for the subdivision, such as access and utilities, or (iii) the proposed building envelopes associated with the subdivision, shall be subject to review under the separate Tree Protection Approval application.

2) Site Clearing. Projects not subject to Planning Board review, other than those specifically identified in Sec. 27-2103(a)(1)-(5) & (13) above, that result in the Tree Removal of ten (10) or more Significant Trees, three (3) or more Heritage Trees, one (1) or more Historic or Cultural Trees, or one (1) or more Program Trees, shall require Tree Protection Approval.

Conditions Found and Corrective Action Required: The property has been stripped of most of its vegetation. Ten (10) or more Significant Trees, as defined in Sec. 27-2102(i)(1) have been removed without prior approval. You are hereby ordered to submit an application to the Planning Board pursuant to Sec. 27-2104 to -2105 for tree protection approval in order to comply with the ordinance.

This process will involve the mitigation of trees removed, by either replanting onsite or offsite, or an in-lieu payment to Tree Mitigation Fund. In addition to mitigations required through the Tree Protection Approval application, pursuant to Sec. 27-133, "...Fines for violations of Article XXI (Tree Protection) shall, at a minimum, be no less than double the amount of the in-lieu payment to the Tree Mitigation Fund set forth in Sec. 27-2104(c)(2)...".

VIOLATION 2

Code Book: South Portland Code of Ordinances - **Code Title:** Chapter 27 Zoning, ARTICLE XV. STANDARDS - **Code Section:** Sec. 27-1526.

Ordinance: Sec. 27-1526. Performance Standards with Respect to Activities in or Adjacent to Freshwater Wetlands.

The purpose of these provisions is to maintain the functions and values of the community's freshwater wetlands and to ensure the health and safety of the residents of the City while preserving our economic vitality.

(a) General Standard. All use of land, the construction or enlargement of buildings, structures, or impervious surface, or the grading, alteration, or disturbance of the land must be carried out so that:

(1) The alteration of any freshwater wetlands on the property will be avoided to the extent feasible considering cost, existing technology and logistics based upon the overall purpose of the project;

(2) The area of freshwater wetlands that is altered will be limited to the minimum amount necessary to complete the project;

(3) A twenty-five foot wide naturally vegetated buffer strip will be maintained between the activity and any river, stream or brook (this is in addition to any requirement for an upland buffer in accordance with Sec. 27-1526(e)); and

(4) The project, including any alteration of freshwater wetlands, will not violate any state water quality law, including those governing the classification of the State's waters.

In determining whether the proposal avoids the alteration of wetlands to the extent feasible and if the area of any alteration is the minimum necessary to complete the project, the Planning Board or the Code Enforcement Officer shall be guided by the State of Maine's Natural Resources Protection Act, Wetlands and Waterbodies Protection Rules Chapter 310 as revised December 5, 2006.

Conditions Found and Corrective Action Required: There is a potential wetland delineation associated with this property, as evidenced by the wetland delineation provided to the Planning Division by New Leaf, LLC in their Site Plan application on sheet "Natural Resource Map", dated January 14, 2025. You are hereby ordered to mitigate the alteration of the wetland.

Per Local Ordinance, Chapter 27, Article XV, Section 1526 (d) Compensation or Mitigation for Freshwater Wetland Alteration, you are responsible for the mitigation or compensation of the wetland alteration.

VIOLATION 3

Code Book: South Portland Code of Ordinances - **Code Title:** Chapter 27 Zoning, ARTICLE XIV. PLANNING BOARD REV - **Code Section:** Sec. 27-1422. Requirement; applicability. (c)

Ordinance: Sec. 27-1422. Requirement; applicability.

(c) Site plan review shall be required for the following activities:

- (1) New construction which by itself or when added to construction completed within the preceding two (2) years, exceeds a minimum floor area, as specified in the provisions of the zoning ordinance pertaining to the district in which the proposed development is located. "New construction" means (a) the construction of a new structure, (b) an addition to an existing structure, or (c) any interior construction for the purpose of converting an existing building from one use to another use if the conversion will significantly increase off-site impacts. A "use" shall be any use listed in the zoning district in which the site is located. The impacts to be considered include, but are not limited to increases in: traffic generation; parking area; utilization of City services; stormwater runoff; or noise, odors, or other annoying or dangerous emissions detectable at lot boundaries. In determining the relative degree of impact of a proposed use, the comparison shall be to either (i) the most recent lawful use of the building or (ii) any lawful use of the building within the last 2 years (but, in the latter case, only if such use was evidenced by a certificate of occupancy on file in the Code Enforcement Officer's office), whether such use was as a permitted use, special exception use or a nonconforming use.
- (2) Development activity which creates more than fifteen thousand (15,000) square feet of disturbed area within any five-year period.
- (3) Any use proposed for the Shoreland Resource Protection Overlay Subdistrict SRP.
- (4) Any special exception use allowed in any zoning district.
- (5) Any use proposed for a conditional or contract zone enacted pursuant to Sec. 27-117 shall be subject to site plan review as otherwise provided in this subsection (c).
- (6) A stationary vending unit. For purposes of site plan review, a stationary vending unit may be either a principal or an accessory use, depending on the zone in which it is located, and must meet all yard setbacks. Impacts to be considered include, but are not limited to, increases in traffic generation and circulation, parking area, utilization of City services, stormwater run off, noise, odors or other annoying or dangerous emissions detectable at lot boundaries.
- (7) Telecommunication towers, as applicable in the specific zoning districts in this Chapter.

(8) Facade and roofing alterations of buildings in Design Review Districts. Facade and roof alterations will be reviewed to ensure compliance with the Design Standards in Sec. 1566 et seq. of this Ordinance. Included is any facade or roof alteration or construction requiring a building permit. The following activities also are included: removal or replacement of facade architectural detailing; facade window or door replacement involving changes of openings; facade siding replacement or installation; roofing replacement or installation; and alteration of any exterior sign. Regardless of whether a building permit is required, site plan approval is not required for facade, roofing, or sign alterations involving ordinary repair or maintenance, repair due to fire or other accidental cause, or repair necessitated by vandalism. In order to provide timely determinations, the Planning Director, after consulting with the Code Enforcement Officer and other relevant City staff, may issue a decision letter to the applicant. If this procedure or its result is unsatisfactory to the applicant, they have the right to receive a Planning Board public hearing following the minor amendment site plan review procedures.

(9) Medium- and large-scale ground-mounted solar energy systems. Roofmounted systems and small-scale ground-mounted systems are not subject to site plan review except as may be required if special exception approval is needed.

(10) Medical and adult use marijuana establishments.

Conditions Found and Corrective Action Required: The tree removal was commissioned by the Portland International Jetport Authority, and conducted as one tree removal effort spanning the subject property and 1561 Broadway, Parcel No.: 042-0000-092. While the 36 Dawson property is below the threshold of 15,000 sq. ft. pursuant to Sec. 27- 1422(c)(2), the development activity altogether exceeds the threshold. You are hereby ordered to apply for Site Plan approval for development activity exceeding 15,000 sq. ft. of disturbance at an after-the-fact rate as provided in the City's Master Fee Schedule.

Per Local Ordinance, Chapter 27, Article XIV, Sec. 27- 1422(c)(2) Site Plan approval is required for the development activity.

GENERAL NOTICES

It is your responsibility to arrange for the correction of the above stated violation(s) prior to the resolve by date of May 5, 2025.

The City's expectation from you, the owner or party in interest:

Your prompt attention to this matter is advised to avoid legal action. It is our sincere desire to work with you in devising an implementation schedule for the correction of these conditions. Please contact this office immediately if circumstances do not permit the timely compliance with this order and abatement of the violations or if you have any questions regarding this matter.

Possible legal action if you do not respond to or comply with this notice:

In lieu of or in addition to the issuance of citations this office may initiate a land use complaint pursuant to Rule 80-K of the Maine Rules of Civil Procedure and 30-A M.R.S.A. §4452 et seq. as amended. A judgement from such a lawsuit in the City's favor can result in a court order that you abate any violations, that you pay a fine of up to two-thousand five-hundred dollars (\$2,500.00), per

violation, per day, and that you pay the City's reasonable attorney fees, expert witness fees and costs.

Your right to appeal:

You may appeal this order and request a hearing before the City of South Portland Board of Appeals by filing a written petition for said hearing at the code enforcement office within thirty (30) days of the date of service of this notice. The petition shall be submitted on forms provided by this office along with the appeal fee as outlined in the fee schedule. Should you fail to appeal you will be barred from any opportunity to contest or challenge the content or terms of this Notice and Order in any further legal proceedings.

If you have any questions, please contact The Code Official at: (207) 767-7603 between 7:30 A.M. and 5:00 P.M., Monday, Wednesday and Thursday or between 9:00 A.M. and 5:00 P.M. on Tuesdays. Your cooperation is expected and appreciated.

A handwritten signature in black ink, appearing to read "Nicholas Richard", written in a cursive style.

Nicholaus Richard
Code Enforcement Director

CC: Milan Nevajda; South Portland Planning Director
Scott Morelli; South Portland City Manager