



# PORTLAND MAINE

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

TO: ZONING BOARD OF APPEALS CHAIR AND MEMBERS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: 38 TORRINGTON AVE., P.I. - #084-S-006 – IR-2 ZONE

DATE: NOVEMBER 7, 2008

This memo is in response to Attorney Goldberg's letter to the Board dated October 16, 2008 and the issuance of a building permit #08-1166 to allow an upward expansion of the property located at 38 Torrington Avenue, Peaks Island.

1. It is important to point out that section 14-436 uses the terminology and concept of *the first floor footprint* and not floor area as use by Attorney Goldberg. *Floor area* has a specific definition in the ordinance. Whereas *footprint* is not a defined term under the Ordinance. Therefore I consider *first floor footprint* to be different than *first floor area*. The first floor footprint that this office used was based upon the plans submitted by the applicant. This office does often check the Assessor's information to be sure that submitted information is similar. In this case there is 44 square foot difference in how this office determined the first floor footprint compared to the Assessor's first floor footprint. That difference can be attributed to stairs or slight dimensional differences. Typically the Assessor's office does not include stairs in their on-line drawings. The zoning review was correct in its base calculations for this project.
2. Section 14-436 allows building extensions under two defined criteria. The defined criteria hinges upon whether the property meets the zone's *land area per dwelling unit* or not. All the Island Residential Zones do not have a *land area per dwelling unit* dimensional requirement listed. However, all of the mainland residential zones do have specific *land area per dwelling unit* requirements listed within them. I have supplied copies of the R-1 thru R-6 zones and a copy of the IR-2 zone for comparisons. Because the IR-2 zone does not have a requirement of land area per dwelling unit, the zoning office allows island properties to use paragraph (b) of 14-436. It is interesting to point out that the zoning analysis shows the allowed increase to be 41% which could meet the paragraph (a) of 14-436. The zoning review was correct in how it determined which paragraph of section 14-436 is applicable.

3. In order to determine any existing floor area, the zoning office uses the Land Use Zoning Ordinance and its definitions and not the Assessor's methods for determining assessments. There is a definition of *story* in the Land Use Ordinance definitions within section 14-47. I have included a copy of the *story* definition for the Board. That definition does not include any wordage that requires such an area to be habitable. It is simply describing how to determine a story and what space would be considered within that area. The key to figuring out existing space is based upon where a portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above at a height of four feet is located. That is the same methodology that the zoning office used in the case of this building in determining existing space on any floor. The zoning review was correct in how it applied the definitions and regulations regarding existing area for this building.
4. The appellant has stated that this same building was expanded under a previous permit in 2006 and that such an expansion would have affected and blocked the expansion under the recently approved application. I have attached a copy of that permit for the Board. Permit #06-0650 as stated on the permit was to "repair and replace deteriorated decks and to remove partitions within the same footprint". This permit was not for an expansion. It in no way affects the expansion allowed under the current permit. Although I do not want the Board to spend a lot of time on this issue because it is really not relevant to the appeal, I also disagree with the appellant that only one expansion ever is permitted on such buildings. The Zoning office reads the expansion restriction to mean that the maximum amount allowed can only occur once during the lifetime of an existing structure. It is not read to mean that a proposed 5% expansion under this section of the ordinance prohibits a home owner from any more expansion. Our office tracks the amount of expansion and will limit expansions based upon the total amount allowed under the ordinance.
5. I will respond to the issue brought forward concerning the structural integrity of the foundation. It is noted that the foundation and/or first floor consists of concrete blocks as shown in the pictures and submitted plans. There is no evidence to suspect that such a base on which two floors of a stick-built structure is located will have an undue weight impact. No real evidence explains why the appellant considers the foundation to be "structurally insufficient". It would be unreasonable of the City to expect single family home owner to burden an expense of hiring an engineer to perform a full structural report prior for the issuance of a permit when it is unwarranted. I would defer to Code Enforcement for further comments.

Please note that at the hearing I would like to further respond to comments made by the appellant.