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

RE: 5 City Pont Road, Peaks Island – 87-U-1 & 5 –

SUBJECT: Zoning comments to revised plans received on January 20, 2010

DATE: February 18, 2010

The submitted plans should be revised concerning the minimum required lot size for this particular lot. The approved use of the current structure is a single family dwelling with an accessory dwelling unit. The accessory dwelling unit was approved on June 3, 1999 as a conditional use by the Zoning Board of Appeals. Section 14-145.9(a)1.b requires a minimum lot area of 30,000 square feet for such a use in an IR-2 Zone. The plan should reflect this required minimum lot size of 30,000 square feet, not 20,000.

Continuing with the approved use, I remind the applicant that once a conditional use is approved, all of the conditions that were reviewed and approved by the Zoning Board must be maintained throughout the life of the approved use. Section 14-145.9(a)1.f conditional use standards state that either the accessory unit of the principal dwelling unit shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences. I am questioning whether the current owner is still meeting this condition. The owners/applicant must address this issue, explaining how they are still in compliance with the Land Use Zoning regulations.

I completely disagree with the supposition that some documentation within the existing file for the original development of the lot cannot be relied upon. It is my opinion that all the paperwork that is in our archived files is part of the official file and were reviewed and relied upon to make decisions for the final approval. I do not believe that the current applicant can pick and choose which documentation should be used for today's reference. It is all part of our documented, official City files.

I also want to reiterate that this is an after-the fact review. The originally approved site has been altered in regards to Shoreland Zoning regulations and alterations to drainage courses without the required reviews and approvals. All such alterations must be addressed at this time to bring the site into compliance with all the regulations.

There is an argument posed as to which Shoreland Zoning regulations apply to this site. I believe the most current regulations apply for current reviews. I also believe that the past ordinance would also not allow the applicants to clear vegetation to create lawn area within the 75' buffer strip as shown on the resubmitted plans.

Using composite exhibit “L” prepared by the applicant, apparently the originally approved plans allowed approximately 552 square feet of loam and seed (lawn) within the protected 75 foot protected buffer. I would allow that same amount of loam and seed (lawn) within the protected 75 foot buffer today, with the condition that it not extend any further into the protected buffer than was originally approved. The applicant’s recent submittal proposes at least *four* times as much lawn area instead of shoreland undergrowth species within the protected 75 foot buffer strip. The plans also propose the mowed lawn to be *three* times *closer* to the high water mark than that approved in 1999. Both the previous and current ordinances state that a buffer strip of vegetation shall be preserved within a strip of land extending seventy-five (75) feet, horizontal distance from any water body. The ordinance uses the verbiage of “vegetation”. It is not referring only to trees. It is referring to all natural, shoreland vegetation, including all natural ground cover. The acknowledgement of the applicant to the previous existence of the taller, natural grasses within the 75 foot protected buffer is important. Such grasses are completely different from a mowed lawn. The shoreland regulations have been tightened up in the current ordinance to eliminate doubt. The ordinances past and present do not allow the removal of natural shoreland vegetation to be replaced by an established lawn. The applicant must revise the plans to reflect the requirements of the current ordinance. I reiterate my previous comments to the applicant. The lawn area was expanded in violation of the original site plan approval and current Land Use Zoning Ordinances. All lawn area within the 75 foot buffer strip (other than the conceded 552 square feet) needs to be properly re-established with shoreland vegetation and undergrowth. Any lawn area shall be outside of the 75 foot protected buffer setback area.

It is reminded that the entire lot is located within the 250 feet Shoreland Zoning area. A cleared area allowed beyond the protected 75 foot protected buffer is limited in size. I would want further confirmation as to the square footage that was previously permitted in 1999. Once I can confirm the size, I would allow the same square footage to be used for the developed area including the house, driveway and lawn area.

I am also not satisfied as to the response from the applicant concerning the removal of trees. I would like some additional documentation concerning the trees that were removed. Who removed them? When were they removed? What kind of documentation does the current owner have that the trees were really dead? What contractor was used to remove the trees?

On a non-zoning, but informational note, I will add that on page 16 the applicant describes a small footpath that is proposed to be able to use public stairs to the beach. On February 2, 2010, I received a voice mail from Wally Elsmore on whose property the stairs are located. He related to me that the stairs to the beach are on his property. According to him, they are not “public” stairs, but private stairs to his property.