

Portland, Maine



Yes. Life's good here.

Planning & Urban Development Department

Jeff Levine, AICP, Director
Marge Schmuckal, Zoning Administrator

Thomas Covington Johnson
Pleasant Avenue
Peaks Island, ME 04108

June 20, 2014

Re: 37 Ballfield Road, Peaks Island – 088-I-006 to 011, 013 to 016 & 022 & 088-J-001 to 003 – IR-1 Residential Zone

Dear Mr. Johnson,

At the June 19, 2014 meeting, the Zoning Board of Appeals voted on four separate items. The board voted 6-0 to overturn the Zoning Administrator's determination that vegetated areas within the Shoreland Zone had been enlarged without site plan approval. The Board voted 4-2 to overturn the Zoning Administrator's determination that the camper/recreational vehicle constituted an unapproved accessory dwelling unit. The board voted 6-0 to uphold the Zoning Administrator's determination that the owner was in violation of having more than one commercial vehicle on his property. Finally, the Board voted 6-0 to overturn the Zoning Administrator's determination that the composting and mulching business was a commercial business. 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 processing fee, legal ad and the notices for the appeal. Please submit your payment on receipt of this invoice.

Regarding the decision on more than one commercial vehicle being parked on your property, we need you to submit to our office a list of vehicles that are parked on your property and specify exactly what the use of each vehicle is so that we can have it in our records.

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,

A handwritten signature in black ink, appearing to read "Ann B. Machado".

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: June 20, 2014
RE: Action taken by the Zoning Board of Appeals on June 19, 2014

Members Present: Sara Moppin (secretary), Gordon Smith (chair), Donna Katsiaficas, Eric Larsson, William Getz and Kent Avery

Members Absent: Chip Gavin

1. New Business

A. Interpretation Appeal:

37 Ballfield Road, Mariner Court & Vermont Avenue, Peaks Island, Thomas Covington Johnson, owner, Tax Map 088, Block I, Lots 006 to 011, 013 to 016 & 022 & Tax Map 088, Block J, Lots 001 to 003, IR-1 Island Residential Zone with Shoreland Overlay: The appellant is challenging the Zoning Administrator's determination dated April 7, 2014 that the vegetation that has been cleared is in violation of the Shoreland Zone requirements. He is also challenging the determination that the camper/recreational vehicle on the property is a dwelling unit. The determination that the appellant is also in violation of parking more than one commercial vehicle on the property is also being challenged. Finally, the appellant is challenging the determination that the selling of mulch is a business use that is not allowed in the IR-1 Zone. The appellant is requesting that the determination be overturned and that he be allowed to continue the activities stated above. Representing the appeal is the applicant's lawyer, David A. Lourie. **The Zoning Board of Appeals voted on four separate items. On item 1, the Board voted 6-0 to grant the appellant's request to overturn the Zoning Administrator's determination that vegetated areas within the Shoreland Zone had been enlarged without site plan approval. On item 2, the Board voted 4-2 to grant the appellant's request to overturn the Zoning Administrator's determination that a camper/recreational vehicle constituted an unapproved accessory dwelling unit. On item 3, the Board voted 6-0 to deny the appellant's request to overturn the Zoning Administrator's determination that the appellant was in violation of having more than one commercial vehicle on his property. On item 4, the Board voted 6-0 to grant the appellant's request to overturn the Zoning Administrator's determination that the composting and mulching business was a commercial business in violation of the permitted or conditional uses in the IR-1 zone.**

Enclosure:

Decision for Agenda from June 19, 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

~~Board~~ Board Members
Present:

Kent Avery
Eric Larsson
William Getz

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Gardy Smith
Sara Mappin
Danna Katsarareas

IR-1 Island Residential Zone
Violation Letter Interpretation Appeal

DECISION

Date of public hearing: June 19, 2014

Name and address of Appellant: Thomas Covington Johnson
Pleasant Avenue
Peaks Island, Maine 04108

Represented by: David Lourie, Esq.

Location of property under appeal: 37 Ballfield Road & Mariner Court & Vermont
Avenue, Peaks Island

For the Record:

Andrew Dukas 13B
Pleasant
Ave

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

David Lourie on behalf of the applicant
Marge Schmuckal - Zoning Administrator
Mr./Mrs. Sellers - abutters 29 Pleasant
Barbara Averpos 32 Evergreen Landing
Karen Taylor Peaks resident

Mark Hall
Herron Ave
#

Jean Alvar 108
Herron Ave
Martin McKern
Saco Maine, City employee.

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

- ① April 7, 2014 letter from Zoning Administrator to Mr./Mrs. Sellers
- ② Maine Agricultural Protection Act and Rules
- ③ City Code provisions
- ④ ~~Plan~~ Email from Mr. Frick dated June 13, 2014
- ⑤ Plan prepared by Mr. Frick
- ⑥ City Map from Mrs. Sellers
- ⑦ email ^{officer} Cindy Taylor to Marge Schmuckal
- ⑧ Photos taken by Marge Schmuckal

Findings of Fact and Conclusions of Law:

The Board derives authority to review an interpretation of the building authority pursuant to Section 14-472 of the land use code.

The Appellant owns property on Peaks Island. Pursuant to complaints filed with the Zoning Administrator by abutting neighbors, the Zoning Administrator determined that there were four land use violations existing on the property at issue, and sent written notice of these violations to the property owner on April 7, 2014. Specifically, the Zoning Administrator determined that violations of the following land use standards exist on the property:

1. Sec. 14-449. [Shoreland Zone] Land use standards.

“(c) Clearing or removal of vegetation:

....

3. Legally existing nonconforming cleared openings may be maintained but shall not be enlarged, except as allowed by this division.”

The Zoning Administrator determined that vegetated areas within the Shoreland Zone have been enlarged without site plan approval.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied 6 Not Satisfied 0

Reason and supporting facts:

From the pictures, there did not appear to be any active cutting on the property. There was brush which appeared to be either blown down or brush from the Sellers property. The weight of the evidence favors the appellant.

2. Sec. 14-145.3. Conditional uses.

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

(a) Residential:

- 1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling . . ."

The Zoning Administrator determined that a camper/recreational vehicle on the Appellant's property constitutes an unapproved accessory dwelling unit.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied 4

Not Satisfied ~~1~~ ^(HRA) 2

Reason and supporting facts:

~~The Board on the personal that~~
~~the camper is a dwelling unit~~
~~Code's definition of dwelling~~

Some board members
 felt camper was not accessory
 because there are 2 separate
 lots in separate ownership
 Some board members felt
 camper was not a dwelling
 unit.

and camper
 and house
 are on
 separate
 lots

3. Sec. 14-335. Off-street parking restricted.

"Off-street parking shall not include:

- (a) More than one (1) commercial motor vehicle in any residence zone, the R-P zone or any B-1 zone . . ."

The Zoning Administrator determined that there is more than one commercial vehicle on the Appellant's property.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied 0 Not Satisfied 6

Reason and supporting facts:

We heard testimony that there ~~were~~ ^{was more than one} CMV ~~not owned by the appellant~~ parked on the property.

4. Sec. 14-145.4. Prohibited uses.

"Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

The Zoning Administrator determined that ^{the mulching business} there is a commercial business on the Appellant's property which is not a permitted or conditional use in the IR-1 Zone.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied Not Satisfied

Reason and supporting facts:

the composting and mulching business constitutes agriculture and is permitted in the zone. Weight of evidence indicates that compost is not being sold.

Decisions: (check one for each item)

ITEM 1

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

ITEM 2

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

ITEM 3

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

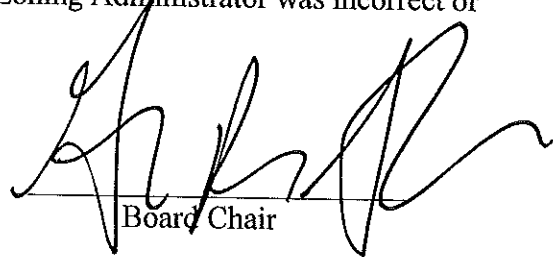
ITEM 4

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

Dated:

6-19-2014


Board Chair

CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT
 389 Congress Street
 Portland, Maine 04101

RECEIPT OF FEES

Application No: 0000-1905	Applicant: JOHNSON THOMAS COVINGTO
Project Name: 37 BALLFIELD RD	Location: 37 BALLFIELD RD
CBL: 088 I006001	Application Type: Interpretation
Invoice Date: 06/11/2014	

Previous Balance	-	Payment Received	+	Current Fees	-	Current Payment	=	Total Due		Payment Due Date
\$100.00		\$100.00		\$279.90		\$0.00		\$279.90		On Receipt

First Billing

Previous Balance	\$100.00
Payment Received 5/6/2014 - Thank you	-
	\$100.00

Fee Description	Qty	Fee/Deposit Charge
Processing Fee	1	\$50.00
Notices - ZBA	64	\$48.00
Legal Advertisements - ZBA	1	\$181.90
		\$279.90
Total Current Fees:	+	\$279.90
Total Current Payments:	-	\$0.00
Amount Due Now:		\$279.90

Detach and remit with payment

CBL 088 I006001
Bill to: JOHNSON THOMAS COVINGTON
 PLEASANT AVE
 PEAKS ISLAND, ME 04108

Application No: 0000-1905
Invoice Date: 06/11/2014
Invoice No: 45410
Total Amt Due: \$279.90
Payment Amount:

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.
 Check the status of your permit or schedule an inspection on-line at <http://www.portlandmaine.gov/planning/permitstatus.asp>