



# PORTLAND MAINE

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

December 15, 2009

David A. MacVane III  
29 Job Road  
Standish, ME 04084

RE: 19 Church Road, Cliff Island – 109B-F-005 – I-B Zone – Shoreland Overlay Zone  
and V-2 Floodplain (panel 10) – application #08-0644

Dear Mr. MacVane,

I am in receipt of a survey prepared by David Bouffard of Boundary Points Professional Land Surveying, LLC. This survey shows that the new 16' x 24' deck that you have built without a permit is not completely on your property. The same deck is not meeting the underlying I-B Zone requirements based on a fishing shack use. Section 14-226(c)2 requires a 10' minimum setback instead of the 0' setback that you are being shown.

My conversation with you on the phone today stated that you have received DEP approvals for the work that you have done. I will reiterate that this office will need to see copies of that approval. Normally DEP puts conditions on any approval that is granted. All those conditions must be also submitted with the approval.

I would first like to outline the history of this lot as I know it. Our microfiche has a permit dated 1946 which approved a 12'x16' shed for fishermen's gear. The Assessor's pre-1957 cards show that a 16'x20' shed. There were no other recent permits in our files.

The Patriots Day Storm hit on April 16, 2007. Per your statements, that is when your 16'x20 fishing shack sustained damage. Soon afterward, without permits, you moved the fishing shack back 8' and added a new 16'x24' deck extending toward the water. It may have been at this time that you changed the use of the building from a fishing shack to a living space.

On 4/9/08 Phil DiPierro wrote you a letter of violation requiring you to apply for the appropriate reviews and approvals. On October 1, 2007 Jon Rioux sent you a stop-work order and required you to come in for the appropriate reviews and permits. On June 9, 2008 this office received a permit application from you to move the building back 8', and to build a 16' x 24' deck and to change the use to a living space.

After reviewing your submittal, I wrote you a letter dated July 11, 2008 explaining that I did not have enough information to do a proper review. I needed a survey with information relating to Shoreland Zoning and Floodplain requirements. I included forms relating to floodplain that needed to be returned with other requirements. It took you a year to return a stamped survey. No other paperwork was returned.

Reviewing your survey, it is very clear that the unpermitted deck is not entirely on your property. About a third of that deck is on the abutting land owned by the Cliff Island Corporation. The deck for a fishing shack use is also not meeting the underlying I-B Zone requirements for side and rear yards. Section 14-226 of the I-B Zone requires a ten (10) foot side setback and a ten (10) foot rear setback. Because the deck is over the property line, your structure has no setback for either the side or rear.

You have also changed the use of the fisherman's shed to a residential living space. This office has no record of water or sewer servicing this property. Neither is shown on the survey. The space is not habitable.

In the I-B Zone, for a residential use, the Ordinance states [section 14-226(a)1] that the closest residential zone shall be used for *all* the dimensional requirements. In this case the closest residential zone is I-R1. The I-R1 Zone requires a minimum lot size of 60,000 square feet for a lot without public water [14-145.5(a)1]. This lot is only 26,150 square feet and is well under the minimum required lot size.

For a residential use in the I-R1 Zone, the minimum rear setback is 30 feet instead of the 0 feet shown [14-145.5(c)2]. The minimum site setback in the I-R1 Zone is 20 feet instead of the 0 feet shown [14-145.5(c)3].

This property is also in a Shoreland Overlay zone. Using the dimensional requirements of the I-R1 Zone, there is a requirement of a 75' setback from the mean high water mark. Section 14-382(a) & (d) state that a lawfully nonconforming building can not be altered nor an addition be build *increasing* any nonconformity. Your proposal has increased the nonconformities of this structure as it relates to use and dimensional requirements. And section 14-449(b) states that no residential structure shall extend seaward beyond the normal high water line. The new deck extends seaward beyond the normal high water line as shown on your submitted survey. It is also noted that an existing nonconforming structure in the Shoreland Zone within the 75 foot from the mean high tide can not be increased more than 30% of the existing floor area or volume. Nor can it be located closer to the mean high tide (14-382(f)). The deck increased the floor area by 120% instead of the maximum 30% allowance. This same section of the Ordinance states that a nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, *provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the building authority.* The relocation of the structure does not conform to the requirements to the greatest practical extent. The survey shows that the structure could be relocated in conformance with the I-R1 zone and Shoreland requirements.

This property is also located within a coastal high hazard area as defined under the Floodplain regulations. You never returned the floodplain paperwork that I sent with my July 11, 2008 letter.

Section 14-450.7 requires that a site plan review be required *prior* to issuing any building permit. The floodplain paper work shall be filled out by a registered professional engineer or architect [14-450.6(b)4.c & d]. Any relocated structure shall be raised two (2) feet above the given flood elevation on the FIRM maps. The given elevation in the V-2 flood zone is 16'. The bottom of the joists shall be at 18' as certified on a Certificate of Elevation filled out and documented by a professional engineer or architect. The current elevation of the fishing shack/living space shown on your survey is 11.42' and is in violation of the Ordinances.

Your survey also indicates other unpermitted additions and structures. There is a 6'x8' addition on the fishing shed/living space that never had any permits. There is also an 8'x8' detached shed that has never been permitted.

In conclusion, your permit has been denied based on the Land Use Zoning Ordinance as outlined above. Your proposal has not been reviewed yet under Building Code standards. The illegal use of the property as a living space shall cease immediately and be returned to the legal use of a fishing shed. That fishing shed shall be relocated on the property meeting the I-B Zone setbacks and floodplain requirements.

The unpermitted deck shall be removed in its entirety.

The 8'x8' shed and the 6'x8' addition shall either be removed or gain the required permits after being reviewed with the appropriate submittals as outlined within this letter.

The property will be inspected in thirty (30) days to insure compliance.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork this is required to file an appeal.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Penny Littell, Director of Planning and Urban Development  
Jeanie Bourke, Code Enforcement Officer  
Phil DiPierro, Planning  
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