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**MEMORANDUM**

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**To:** FILE

**From:**

**Subject:** Application ID: 2012-601

**Date:** 2/1/2013

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**Comments Submitted by: Marge Schmuckal/Zoning on 2/1/2013**

On 1/17/2013 the Zoning Board of Appeals reviewed the request for a variance for the setback of 22' instead of the currently required 25' in the EWPZ. The Board first voted in agreement with my memo that the roof line because of its height would not have to meet the 25' setback to the pier edge. The Board did not vote on the other portion of the appeal. One Board member stated that he did not think this was even an appeal. He thought it would be legally nonconforming. The appeal was tabled.

On 1/24/2013 I met with Austin Smith of Simon Architects and Peter Plumb of Murray Plumb and Murray. Austin had the original plans of the building when it was first built. He showed me that the supports that held up the existing building are the same supports that will be holding up the new building from the piers under the decking to upward and supporting the roof. They are the same in support then and now. They were able to get me an overlay of the proposed building on the original building plans. They match. There are no changes to the location of those supports. Therefore, I have concluded that the current structure is legally nonconforming for the setback. And that there are rights to rebuild within that legal nonconforming setback if done within one year. And further more I have determined that the proposed structure and project is in compliance with the Land Use Zoning Ordinance.

It is noted that DEP was notified of the appeal because it is within the Shoreland Zone. DEP gave tacit approval by not negatively responding prior to the appeal date.

The project will still need to supply an Elevation Certificate in compliance with Floodplain regulations at the time of permit application. They must verify that the first floor elevation is at least 2 feet above the elevation of 9.6 NGVD as listed in the Flood Insurance Study promulgated by the Federal Emergency Management Agency for the City of Portland, or a minimum of 11.6 NGVD.

My review indicates that the rest of the EWPZ requirements are being met. Separate permits shall be required for any new signage.

Marge Schmuckal