

City of Portland, Maine - Building or Use Permit Application
 389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: **09-0584** Issue Date: **083A E007001**

Location of Construction: **90 CRESCENT AVE Great Diamon**
 Business Name: **ROBERTS, DOUGLAS S ETAL**
 Lessee/Buyer's Name: **Travis Berube**

Owner Name: **ROBERTS, DOUGLAS S ETAL**
 Contractor Name: **Travis Berube**
 Owner Address: **745 JACKSON VALLEY RD**
 Contractor Address: **67 Boothby Ave So Portland**
 Phone: **207-772-0202**
 Phone: **2079396572**

Past Use: **Vacant Land**
 Proposed Use: **Single Family Home w/ an accessory apt - Build new 4,024 sq ft Single Family Home w/ an accessory apartment 2 bedrooms 4 baths**

Permit Type: **Single Family**
 Permit Fee: **\$4,345.00** Cost of Work: **\$424,390.00** CEO District: **1**
 FIRE DEPT: Approved Denied
 INSPECTION: **IRC 2003** Use Group: **R3** Type: **5B**
 Signature: **DM 8/31/09**

Proposed Project Description: **Build new 4,024 sq ft Single Family Home w/ an accessory apartment 2 bedrooms 4 baths**

Signature: **DM 8/31/09**
 PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.)
 Action: Approved Approved w/Conditions Denied
 Signature: **DM 8/31/09** Date: **8/31/09**

Permit Taken By: **Ldobson** Date Applied For: **06/09/2009**
Zoning Approval

- This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules.
- Building permits do not include plumbing, septic or electrical work.
- Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work.

Special Zone or Reviews	Zoning Appeal	Historic Preservation
<input type="checkbox"/> Shoreland <input checked="" type="checkbox"/> Wetland <input checked="" type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <input checked="" type="checkbox"/> Site Plan <input type="checkbox"/> Major <input checked="" type="checkbox"/> Minor <input type="checkbox"/> MM <input type="checkbox"/> MM Date: 7/17/09	<input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input checked="" type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied Date: 7/16/09	<input checked="" type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Date: 8/31/09

PERMIT ISSUED
 SEP - 1 2009
 CITY OF PORTLAND

CERTIFICATION

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application is issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provision of the code(s) applicable to such permit.

SIGNATURE OF APPLICANT _____ DATE _____ PHONE _____

RESponsible Person in Charge of Work, Title _____ ADDRESS _____ DATE _____ PHONE _____



Albert Frick Associates, Inc.

Soil Scientists & Site Evaluators

95A County Road
(207) 839-5563

Gorham, Maine 04038
FAX (207) 839-5564

Albert Frick, SS, SE
James Logan, SS, SE
Matthew Logan, SE
Brady Frick, SE
Bryan Jordan, SE
William O'Connor, SE

November 12, 2008

February 21, 2009 revision

Maggie Connolly

Langan Engineering & Env. Services
30 South 17th Street, Suite 1300
Philadelphia, PA 19103-4005

Re: Connolly, Crescent Lane, Great Diamond Island, Portland

Dear Maggie:

You requested that I send you a Site Plan of the property and show the required setbacks defining the available building window, per the City of Portland's building setback requirements, and Maine Department of Environmental Protection, Natural Resource Protection Act setbacks.

The building window on the subject property is defined by a 25' front and 20' side. The setback to Casco Bay is 75' from the spring high tide elevation. The forested wetland on the parcel, which is in the Shoreland zone (i.e. within 250' of the spring high tide elevation of Casco Bay can not be filled without a DEP NRP A permit). It would be prudent to maintain a sufficient setback to the wetland boundary with any proposed building or deck so that construction and proper building grading can be established without impacting the wetlands. (See enclosed DEP NRP A Rules, Chapter 305, Section 2: Activities adjacent to protected natural resources). Also, proposed building with a full foundation needs to be a minimum of 20'; from the proposed septic and 15' if it is on a slab. Please see attached Site Plan.

Please contact me if you have any questions or additional matters for discussion.

Respectfully,

Albert Frick
AF/nd

Enc.

cc: Herb Gray, P.E.

From: Danielle West-Chuhnta
 To: Schmuckel, Marge
 Date: 6/11/2009 11:41:23 AM
 Subject: "Pending" Applications

Marge:

Yesterday we were discussing an application that you had just received and you were wondering if the new shoreland provisions (which the City has not yet adopted, but will adopt in about a week) would apply to the application.

Under Maine Law if an application is "pending" when an ordinance is amended, 1 M.R.S.A. § 302 requires that the review be completed under the original ordinance, unless the new ordinance contains a retroactivity clause.

Section 302 defines "substantive review" as a "review of that application to determine whether it complies with the review criteria and other applicable requirements of law."

Maine courts have found that an application is "pending" if the administrative official or board has started to treat the application as complete and has begun to review it for substantive compliance with the requirements of the ordinance, absent a contrary definition of "pending application" in the ordinance. See *Littlefield v. Inhabitants of the Town of Lyman*, 447 A.2d 1231 (Me. 1982); *Maine Isle Corp., Inc. v. Town of St. George*, 499 A.2d 149 (Me. 1985).

Preliminary review of an application for "completeness", however, generally does not constitute a substantive review. See *Waste Disposal Inc. v. Town of Porter*, 563 A.2d 779, 781 (Me. 1989). Moreover, the fact that an application was delivered to or received and receipted by staff does not make an application "pending," absent ordinance language to the contrary. See *P. W. Associates v. Town of Kennebunkport*, CV-88-716 and CV-89-29 (Me. Super. Ct., York Cty., Nov. 20, 1989).

This, however, is not the end of the analysis. It is also necessary to determine if the applicant has vested rights to proceed. The Maine Law Court (in *Sahl v. Town of York*, 2000 ME 180, 760 A.2d 266) held that "in order for a right to proceed with construction under the existing ordinance to vest, three requirements must be met (1) there must be the actual physical commencement of some significant and visible construction; (2) the commencement must be undertaken in good faith . . . with the intention to continue with the construction and to carry it through to completion; and (3) the commencement of construction must be pursuant to a validly issued permit." The court went on to note that "rights may not vest solely because a property owner: (1) filed an application for a building permit; (2) was issued a building permit; (3) relied on the language of the existing ordinance; or (4) incurred preliminary expenses in preparing and submitting the application for a permit."

Based on the above law and the facts (i.e. that you just received the application, no review has taken place, no approval has been granted and no work undertaken) I think that the application in question is not pending and therefore the new shoreland regulations (once enacted) would most likely be applicable.

Thanks a lot,

Danielle

Danielle P. West-Chuhnta
Associate Corporation Counsel
City of Portland, Maine

CC: Barhydt, Barbara

pendings
US
vested rights

From: Marge Schmuckal
To: Danielle West -Chunta
Date: 6/15/2009 11:32:09 AM
Subject: Re: Nancy Connolly GDI Matter

Danielle,
the Board is pretty good at looking only at the Conditional Use standards for the accessory unit. If the applicant changes the current building permit application for a single family only, and goes forward immediately and breaks ground to start construction on the foundation, then at least some sort of "substantial" work has begun. If the structure has "substantially" begun on the full footprint, then the use would not essentially change the building that was already approved and would not affect a separate review for shoreland zoning.

At least, those are my thoughts right now. Does this help in anyway?

Marge

>>> Danielle West -Chunta 6/15/2009 11:16:45 AM >>>
Marge:

I have done some additional research with regard to the Nancy Connolly matter. As I indicated in my last message, I think that since you have not undergone substantive review of the application it is not pending. Your screening of the application to determine adequacy of the information presented and to see if it complies with the review criteria does not bestow pending status on the application.

Given this conclusion, and the shoreland regulations will go into effect 30 days after they are enacted (i.e. around July 15th) and since Ms. Connolly needs to obtain Conditional Use Permit from the ZBA (and such review would most likely not take place until after July 15th), I think that Ms. Connolly's application would most likely not be pending (i.e. reviewed under the old shoreland requirements).

With regard to the vested rights analysis, I think that she has also not obtained vested rights (yet) since neither the submission of her permit application, nor the issuance of the permit (when and if it happens), establishes vested rights.

Based on the above conclusions, I think that Attorney Cloutier's suggestion regarding submission of a building permit (without the accessory unit) seems like an acceptable alternative. My one concern with this idea is that it involves the subsequent submission of conditional use permit application to the ZBA (which would not meet on this issue until after July 15th) and an amendment to the building permit. As such, if the new shoreland regulations go into effect on July 15th, and the ZBA meets after this date, then it seems to me that we would have to apply the new shoreland requirements to the Conditional Use Permit application.

What are your thoughts? Do you think that this would affect the ZBA's decision with regard to the accessory structure?

Thanks a lot,

Danielle

Danielle P. West-Chunta
Associate Corporation Counsel
City of Portland, Maine

Memorandum
Department of Planning and Development
Planning Division



TO: Inspections Department

FROM: Philip DiPietro, Development Review Coordinator

DATE: June 23, 2010

RE: C. of O. for # 90 Crescent Avenue, Great Diamond Island
(Id#2009-0058) (CBL 083A E 007001)

After visiting the site, I have the following comments:

Site work incomplete:

1. Construction of the parking area per plans and specifications,
2. Minor Miscellaneous site work,

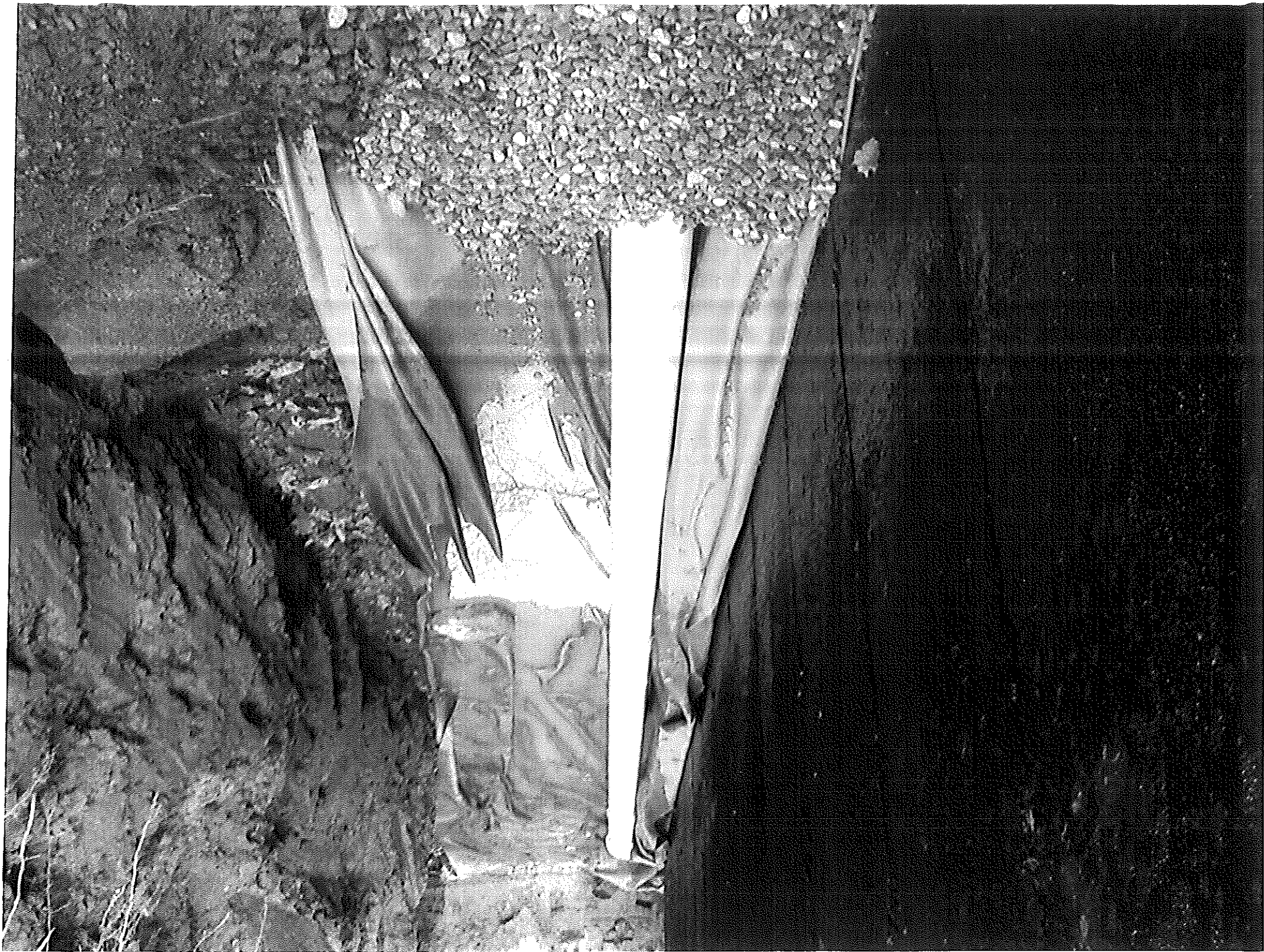
Additional submission requirements:

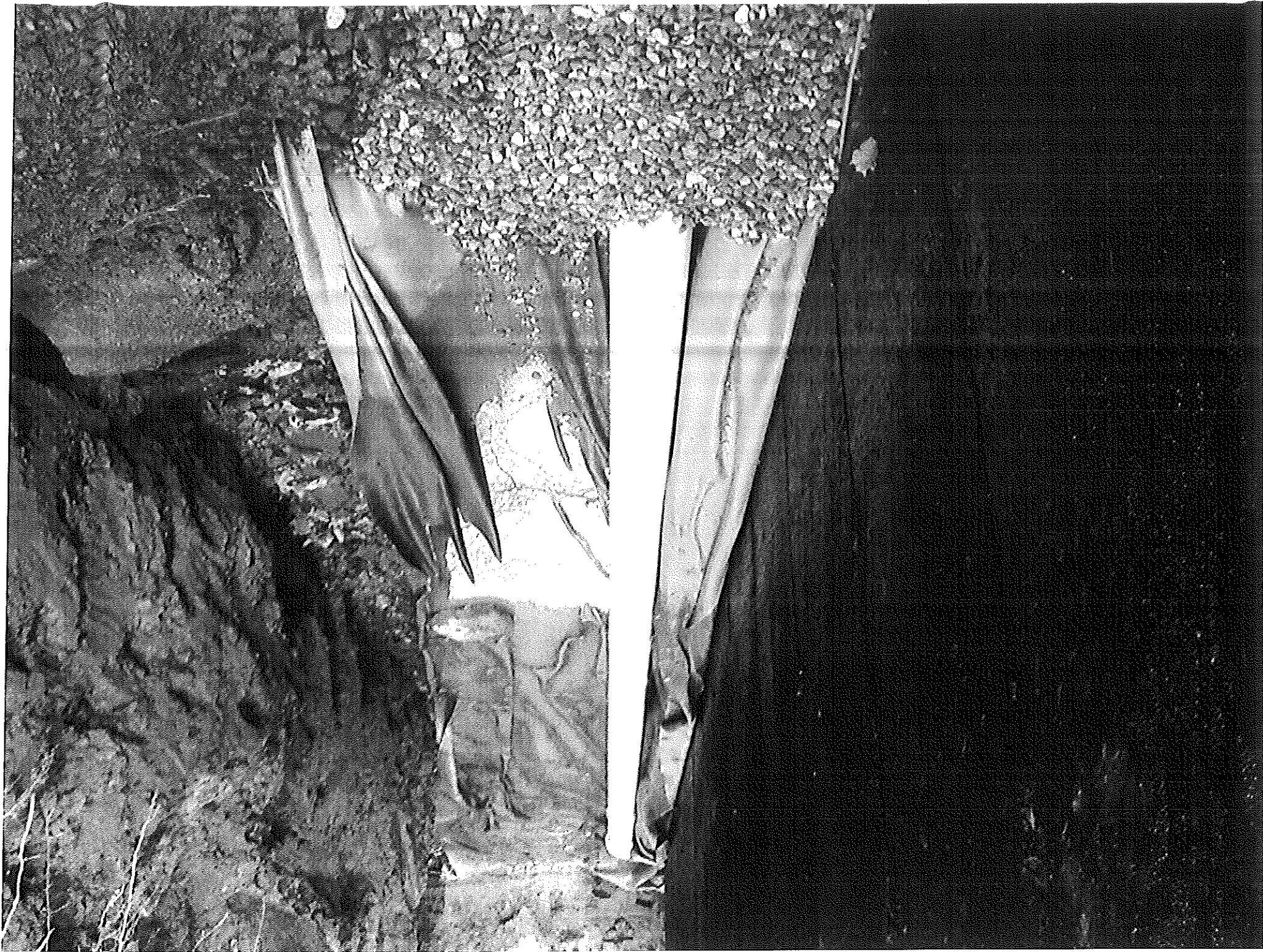
1. Submission of "as-built" site plans that show changes from the original approved site plan including but not limited to the relocation of the septic tank and pump station, re-orientation of the structure, grading, perimeter drain, etc.
2. Submission and approval of a building permit application for the storage shed.

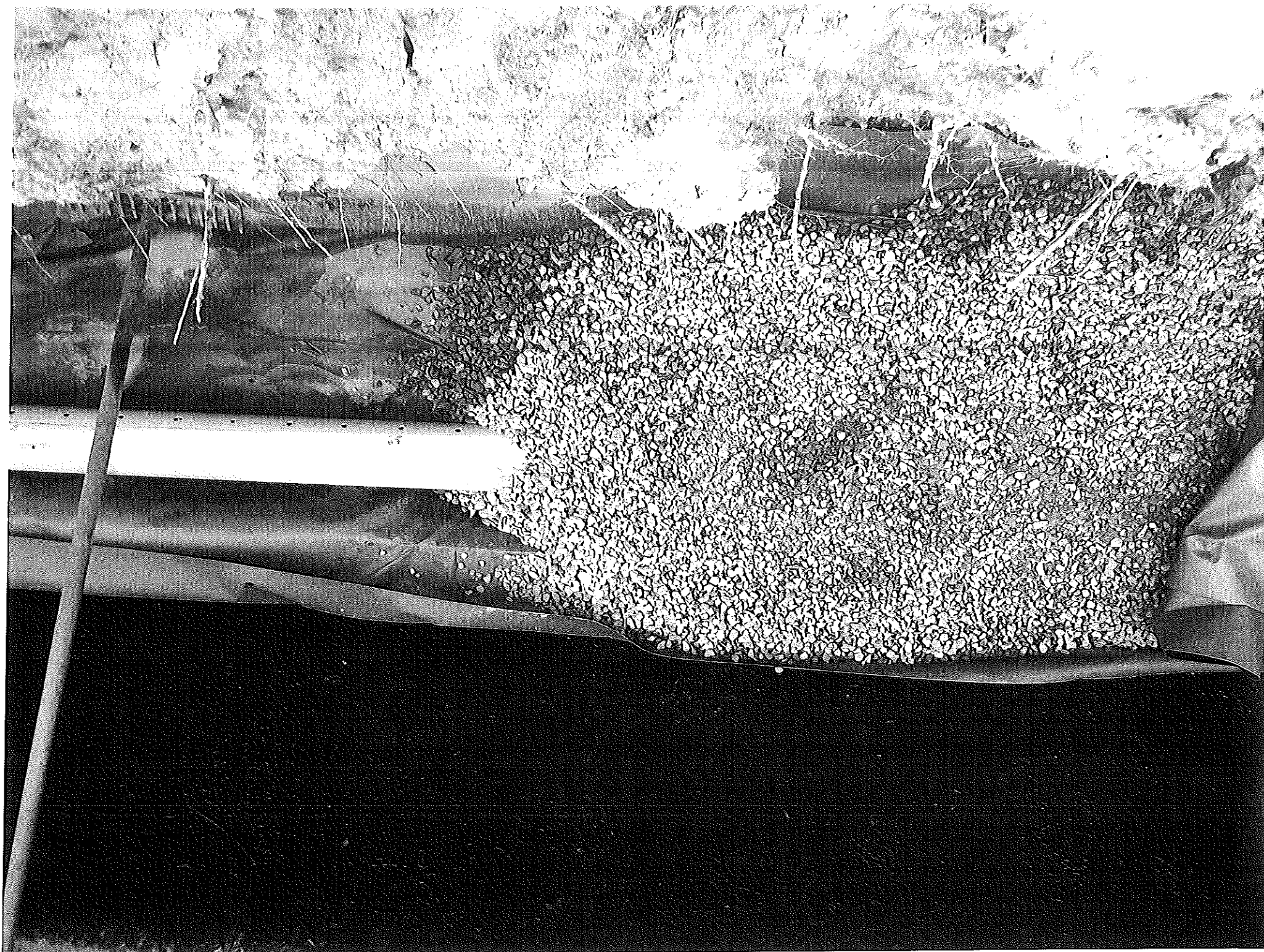
I anticipate this work can be completed by **July 15, 2010**.

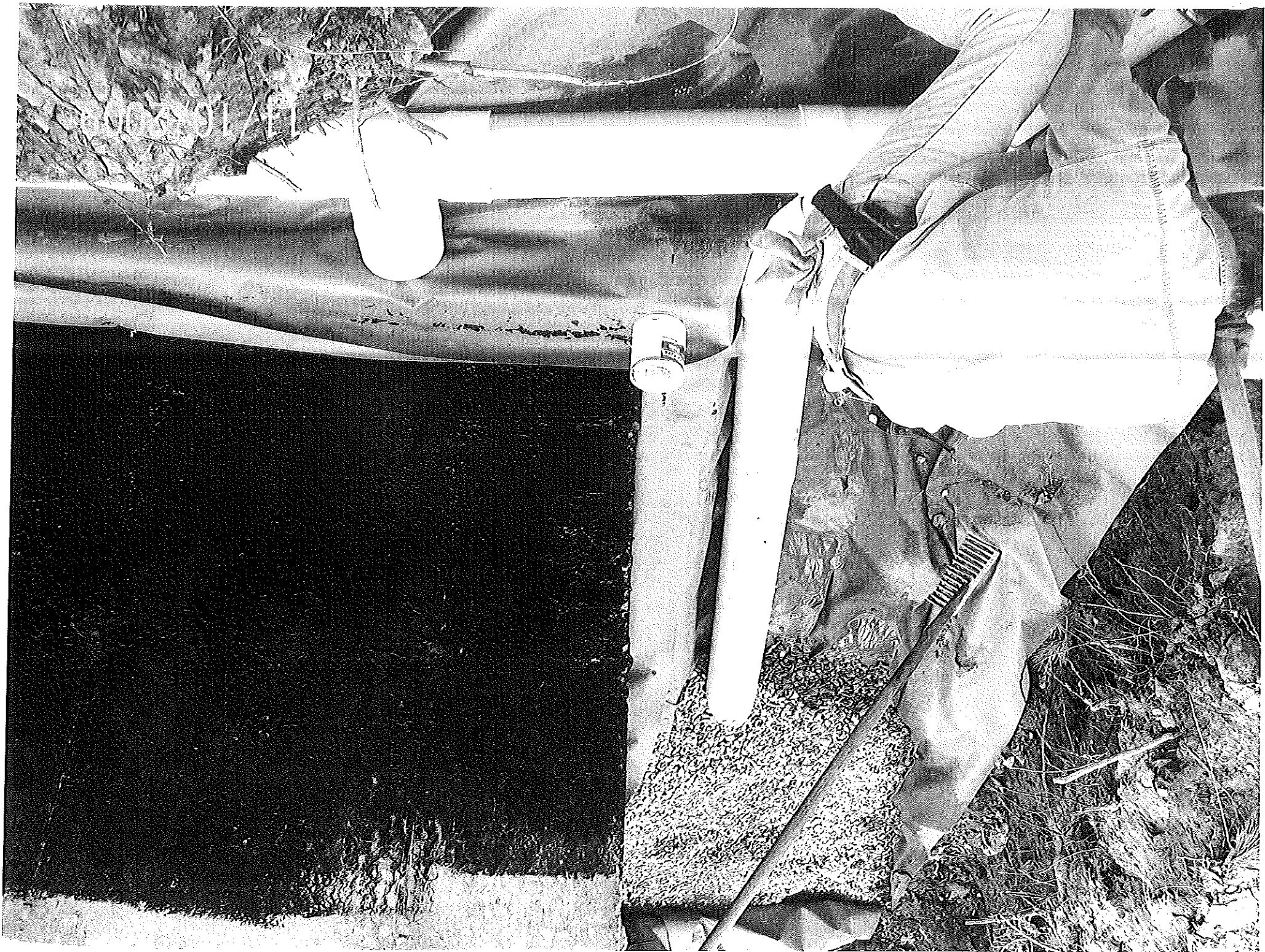
At this time, I **recommend issuing a temporary Certificate of Occupancy.**

Cc: Inspection Services Manager
File: Barbara Barbydt, Development Review Services Manager
File: Urban Insight









90 Crescent Ave
 Peles Island 09-0584

083 AE 007 001

ONE AND TWO FAMILY

Soil type/Presumptive Load Value (Table R401.4.1)

Component	Submitted Plan	Findings	Revisions	Date
STRUCTURAL				
Roofing Dimensions/Depth (Table R403.1 & R403.1(1), Section R403.1 & R403.1.4.1)	4-6 3/8 x 1.0 Deep concrete rafting - concrete block walls	OK		
Foundation Drainage, Fabric, Damp proofing (Section R405 & R406)	4" perforated pipe - damp proofing Fltk fabric - Sand/crushed flk	OK		
Ventilation/Access (Section R408.1 & R408.3) Crawls Space ONLY	N/A			
Anchor Bolts/Straps, spacing (Section R403.1.6)	1/2 anchor bolts max 6'-0" - OK	OK		
Lally Column Type (Section R407)	5 square x 1 1/4 inch steel tube	OK		
Girder & Header Spans (Table R 502.5(2))	(3) 13/4 x 9 1/4 LVL girders	OK		
Built-Up Wood Center Girder				
Dimension/Type				
Sill/Band Joist Type & Dimensions	2x10 pt Sill Band	OK		
First Floor Joist Species Dimensions and Spacing (Table R502.3.1(1) & Table R502.3.1(2))	2x10 Plan Joist 16" OC	OK		
Second Floor Joist Species Dimensions and Spacing (Table R502.3.1(1) & Table R502.3.1(2))	2x10 Plan Joist 16" OC	OK		
Attic or additional Floor Joist Species Dimensions and Spacing (Table R802.4(1) and R802.4(2))	N/A	OK		

PLAN REVIEW

CHECKLIST

	Pitch, Span, Spacing & Dimension (Table R802.5.1(1) - R 802.5.1(8))	12/7 pitch	OK
	Roof Rafter; Framing & Connections (Section R802.3 & R802.3.1)	2x2 16" oc rafters	OK
	Sheathing; Floor, Wall and roof (Table R503.2.1.1(1))	ASD with rafters 5/8 sheathing waterproofing	OK
	Fastener Schedule (Table R602.3(1) & (2))	per spec 2003	OK
	Private Garage (Section R309) Living Space ? (Above or beside) Fire separation (Section R309.2)	NA	NA
	Opening Protection (Section R309.1)	Essex windows	OK
	Emergency Escape and Rescue Openings (Section R310)	Asphalt shingles 5/8 sheathing 30yr underlayment	OK
	Roof Covering (Chapter 9)	per spec 2003	OK
	Safety Glazing (Section R308)	per spec 2003	OK
	Attic Access (Section R807)	NA	OK
	Chimney Clearances/Fire Blocking (Chap. 10)	per spec 2003 2 inches	OK
	Header Schedule (Section 502.5(1) & (2))	per spec 2003	OK
	Energy Efficiency (N1101.2.1) R-Factors of Walls, Floors, Ceilings, Building Envelope, U-Factor Fenestration	see plans - listed	OK

Type of Heating System			Means of Egress (Sec R311 & R312)	Basement	Number of Stairways	Interior	Exterior	Treads and Risers (Section R311.5.3)	Width (Section R311.5.1)	Headroom (Section R311.5.2)	Guardrails and Handrails (Section R312 & R311.5.6 - R311.5.6.3)	Smoke Detectors (Section R313) Location and type/Interconnected	Driftstopping (Section R502.12) and Fireblocking (Section R602.8)	Dwelling Unit Separation (Section R317) and IBC - 2003 (Section 1207)	Deck Construction (Section R502.2.1)
		2 2 1	10 inch min tread - 3/4" max rise	36 inch min	6" min	36" guard - 34-38 Handrails	each bedroom of all common areas - handriled - interconnected	OK	OK	per IRC 2003	OK	OK	OK	OK	OK

BUILDING PERMIT INSPECTION PROCEDURES

Please call 874-8703 or 874-8693 (ONLY)

**to schedule your inspections as agreed upon
Permits expire in 6 months, if the project is not started or ceases for 6 months.**

The Owner or their designee is required to notify the inspections office for the following inspections and provide adequate notice. Notice must be called in 48-72 hours in advance in order to schedule an inspection:

By initializing at each inspection time, you are agreeing that you understand the inspection procedure and additional fees from a "Stop Work Order" and "Stop Work Order Release" will be incurred if the procedure is not followed as stated below.

A Pre-construction Meeting will take place upon receipt of your building permit.

- Footing/Building Location Inspection: Prior to pouring concrete or setting precast piers
 - Foundation Inspection: Prior to placing ANY backfill for below grade occupiable space
 - Framing/Rough Plumbing/Electrical: Prior to Any Insulating or drywalling
 - Final/Certificate of Occupancy: Prior to any occupancy of the structure or use.
- NOTE: There is a \$75.00 fee per inspection at this point.

Certificate of Occupancy is not required for certain projects. Your inspector can advise you if your project requires a Certificate of Occupancy. All projects DO require a final inspection.

If any of the inspections do not occur, the project cannot go on to the next phase, REGARDLESS OF THE NOTICE OR CIRCUMSTANCES.

**CERTIFICATE OF OCCUPANCIES MUST BE ISSUED AND PAID FOR, BEFORE
THE SPACE MAY BE OCCUPIED.**

Signature of Applicant/Designee

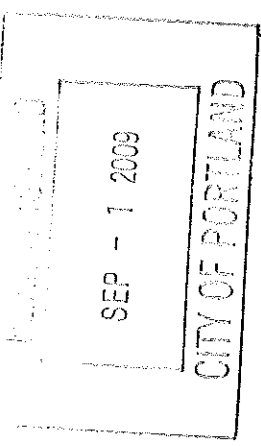
Date

Thomas W. Mackley

9/11/09

Signature of Inspections Official

Date



City of Portland, Maine - Building or Use Permit

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No:	09-0584	Date Applied For:	06/09/2009	CBL:	083A E007001
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Location of Construction:	90 CRESCENT AVE Great Diamon	Owner Name:	ROBERTS, DOUGLAS S ETAL	Owner Address:	745 JACKSON VALLEY RD	Phone:	207-772-0202
Business Name:		Contractor Name:	Travis Berube	Contractor Address:	67 Boothby Ave So Portland	Phone	(207) 939-6572
Lessee/Buyer's Name		Phone:		Permit Type:	Single Family		

Proposed Use: Single Family Home w/ an accessory apt - Build new 4,024 sq ft
 Single Family Home w/ an accessory apartment 2 bedrooms 4 baths

Proposed Project Description: Build new 4,024 sq ft Single Family Home w/ an accessory apartment 2 bedrooms 4 baths

Dept: Zoning Status: Approved with Conditions Reviewer: Marge Schmuckal Approval Date: 09/01/2009
 Note: Ok to Issue:

- 1) All other approvals listed on the previous permit are still in force.
- 2) The area of land being cleared is given as 7911 sq ft. There shall be no more than 10,000 square feet of undergrowth cleared for lawn. The rest of the lot SHALL REMAIN UNDISTURBED.
- 3) This property shall remain a single family dwelling with an accessory dwelling unit as approved by the Zoning Board of Appeals. Any change of use shall require a separate permit application for review and approval.
- 4) This permit is being approved on the basis of plans submitted. Any deviations shall require a separate approval before starting that work.

Dept: Building Status: Approved with Conditions Reviewer: Tom Markley Approval Date: 08/31/2009
 Note: Ok to Issue:

- 1) This permit is approved, all of the review questions/comments have been responded to and adequately satisfy code compliance of this project.
- 2) The appliance and venting shall be installed in accordance with the UL listing, IMC 2003 and NFPA 211.
- 3) All penetrations between dwelling units and dwelling units and common areas shall be protected with approved firestop materials, and recessed lighting/vent fixtures shall not reduce the (1 hour) required rating per Sec. 712 of IBC
- 4) There must be a 2" clearance maintained between the chimney and any combustible material, with draft stopping per code at each level
- 5) Hardwired interconnected battery backup smoke detectors shall be installed in all bedrooms, protecting the bedrooms, and on every level.
- 6) The design load spec sheets for any engineered beam(s) / Trusses must be submitted to this office.
- 7) A copy of the enclosed chimney or fireplace disclosure must be submitted to this office upon completion of the permitted work or for the Certificate of Occupancy.
- 8) Separate permits are required for any electrical, plumbing, sprinkler, fire alarm or HVAC or exhaust systems. Separate plans may need to be submitted for approval as a part of this process.
- 9) Application approval based upon information provided by applicant. Any deviation from approved plans requires separate review and approval prior to work.

Dept: DRC Status: Approved with Conditions Reviewer: Eric Giles Approval Date: 07/13/2009
 Note: Ok to Issue:

- 1) Due to the site's proximity to a highly unstable slope, there shall be NO Clearing of any trees and understory vegetation within 75' of the High Water Mark. There shall be no filling or clearing of the Forested wetlands as shown on the submitted survey. It has been stated that only the house and parking area are to be cleared for building. The silt fences shall be moved out of the 75' setback from th HW/M. If any selective clearing or cutting is proposed a plan shall be submitted to the Planning Authority for review and approval.



General Building Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction:		90 Crescent Avenue Great Diamond Island, Portland, Maine	
Total Square Footage of Proposed Structure/Area		Square Footage of Lot	Number of Stories
4,024 sq ft		32,149.50 sq ft	2
Tax Assessor's Chart Block & Lot	Applicant *must be owner, Lessee or Buyer*	Name	Telephone:
Chart# Block# Lot#	Name Nancy Jo Connolly	Address 82 Salem Street	207-772-0202
83A E 7, 8 & 10	Address 82 Salem Street	City, State & Zip Portland, Me. 04102	
Lessee/DBA (If Applicable)	Owner (if different from Applicant)	Cost Of	
Travis Berube	Name	Work: \$424,390.00	
67 Boothby Avenue	Address	C of O Fee: \$	
South Portland, Maine	City, State & Zip	Total Fee: \$	
04106			

Current legal use (i.e. single family) Vacant Land Single Family Passive Recreation Number of Residential Units 2
 If vacant, what was the previous use?
 Proposed Specific use: single family w/ inlaw apartment
 Is property part of a subdivision? yes If yes, please name Great Diamond Island Asso
 Project description: A year round home with an inlaw apartment YBalls Bid Fee 41070.00
will be applying for Conditional Use Appeal Site 300.00
 Contractor's name: Travis Berube copy 750.00
 Address: 67 Boothby Avenue
 City, State & Zip South Portland, Maine 04106 Telephone: 207-939-6572 750.00
 Who should we contact when the permit is ready: Travis Berube Telephone: 207-939-6572 750.00
 Mailing address: 67 Boothby Avenue, South Portland, Me. 04106

Please submit all of the information outlined on the applicable Checklist. Failure to do so will result in the automatic denial of your permit.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information or to download copies of this form and other applications visit the Inspections Division on-line at www.portlandmaine.gov, or stop by the Inspections Division office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature: [Signature] Date: June 8, 2009

This is not a permit; you may not commence ANY work until the permit is issued

CLOUTIER, CONLEY & DUFFETT, P.A.

A Professional Association

Attorneys at Law

465 Congress Street
Portland, Maine 04101-3528

AREA CODE 207
TELEPHONE 775-1515
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mainelegal@aol.com
James F. Cloutier
Maine Bar # 2126

James F. Cloutier
Mark A. Cloutier
Gerard P. Conley, Jr.
Thomas W. Cloutier
Neale A. Duffett
Andrew J. Cloutier

June 12, 2009

Danielle West Chuhria
Office of Corporation Counsel
Portland City Hall
389 Congress Street
Portland, Maine 04101

Via email: dwchuhria@portlandmaine.gov
mes@portlandmaine.gov

Re: Nancy Connolly et al., Great Diamond Island Map 83 A-E 7, 8 & 10

Dear Danielle:

Thank you for your voice message. I have been asked to represent Nancy Connolly and her Sister and brother in law, Douglas and Kathy Sue Roberts family in relation to obtaining a building permit for construction of a home on Great Diamond Island. When, after literally years of planning financing, studying wetlands, finding ways to meet zoning laws and developing a game plan for moving permanently to the island after constructing a home, the owners presented a plan for a two unit construction project to the Planning Dept. and learned that accessory dwelling units, which they intended to use to create a small apartment for Nancy in conjunction with a larger home for Doug and Kathy, required approval as a conditional use by the Zoning Board Of Appeals.

Undaunted, they paid the several thousand dollar building permit fee and were told that the application would remain in abeyance until The Zoning Board Of Appeals has ruled. In the circumstances, the earliest that they could get on the ZBA agenda was the July meeting, assuming they generate the necessary paperwork promptly. There were also informed that the City Council has, in second reading next Monday night, revisions of the shoreland zoning ordinances which were required by the DEP to be enacted by July 1, 2009. Included in those proposals was a setback from bluffs which appears to apply to their area of Great Diamond Island, although that particular bluffs have not been evaluated. In essence, this regulation will make the property basically unbuildable given the additional setback which is likely to be required and the sensitive nature of some of the area of the property, where wetlands need to be protected, etc.

Nancy then had one or more telephone conversations with Marge Schmuckel, inquiring concerning whether they would be grandfathered with the application pending in the event that the Zoning Board Of Appeals allows the accessory unit as a conditional of use. Incidentally, in the famous last words department, examination of the standards the board reviews suggest to the applicants that there is nothing remarkable about their application which would cause the issuance of a conditional use permit to be in question.

My basic question to your office is whether the act of the Planning Department in accepting the application for a building permit for a single-family home with an accessory unit, followed by the determination that the application requires the conditional use permit constitutes sufficient action on the merits of the application at this point for it can be considered pending under pertinent zoning rules, thereby creating a vested right to proceed under current regulations. If so, can we confirm that the approval of a conditional use permit would allow for the processing of the building permit application to issuance of the permit in the regular

course under the existing rules, as opposed to any new requirements which might be enacted as early as Monday evening.

My second question is predicated on the possible conclusion that the application would not be considered pending at this time. It appears to me that the family could file an application for a single-family residence using the same footprint which would plainly be pending and entitled to consideration under the now existing rules. This would entitle the family to a building permit for the existing designed structure so long as the improvements to create the accessory unit were deleted from the application. Thereafter, the family could present an application for a conditional use permit to the ZBA and, if the same is approved, file an amendment to the building permit or seek an additional building permit to install the unit.

Since I have not been involved in conversations with Marge Schmuckel, I am forwarding a copy of this letter to her to keep her apprised of the status of the application. I look forward to meeting and talking with you about this at your convenience, and will call again on Monday for that purpose..

Thank you for your assistance concerning this matter.

Very truly yours,

James F. Cloutier

Location of Construction:	Owner Name:	Owner Address:	Phone:
90 CRESCENT AVE Great Diamon	ROBERTS DOUGLAS S ETAL	745 JACKSON VALLEY RD	207-772-0202
Business Name:	Contractor Name:	Contractor Address:	Phone
	Travis Berube	67 Boothby Ave So Portland	(207) 939-6572
Lessee/Buyer's Name	Phone:	Permit Type:	
		Single Family	
<p>2) Erosion and Sedimentation control shall be established and inspected by the Development Review Coordinator prior to soil disturbance, and shall be done in accordance with Best Management Practices, Maine Department of Environmental Protection Technical and Design Standards and Guidelines. All Erosion and Sedimentation control measures must be inspected and maintained daily.</p> <p>3) All Site Work will conform to the City of Portland ordinance on Shoreland Regulations (Division 26).</p> <p>4) NO CHANGES IN GRADING IS PROPOSED. ANY CHANGES IN TOPOGRAPHY SHALL REQUIRE ADDITIONAL REVIEW AND APPROVAL BY THE CITY.</p> <p>5) The Development Review Coordinator reserves the right to require additional lot grading or other drainage improvements as necessary due to field conditions.</p> <p>6) A street opening permit(s) is required for your site. Please contact Carol Merritt ay 874-8300, ext. 8822. (Only excavators licensed by the City of Portland are eligible.)</p> <p>7) A sewer permit is required for your project. Please contact Carol Merritt at 874-8300, ext. 8822. The Wastewater and Drainage section of Public Services must be notified five (5) working days prior to sewer connection to schedule an inspector for your site.</p> <p>8) The Development Review Coordinator (874-8632) must be notified five (5) working days prior to date required for final site inspection. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.</p> <p>9) Two (2) City of Portland approved species and size trees must be planted on your street frontage prior to issuance of a Certificate of Occupancy.</p> <p>10 All Site work (final grading, landscaping, loam and seed) must be completed prior to issuance of a certificate of occupancy.</p>			
Comments:			
6/24/2009-lmdi: Received on 6/23/2009 an amendment to this application eliminating the accessory apartment.			
6/18/2009-mes: On June 15th the City Council adopted the new shoreland regulations which have added protections to highly unstable coastal bluffs. This property does have such highly unstable bluffs which are protected. Coporation Counsel also weighed in on whether this application needs to go by the old or new shoreland zoning rules. It needs to meet the new rules per Danielle in Corp. Counsel.			
7/13/2009-tm: the DRC approval should be with permit # 0664 which is an amendment to this permit eliminating the accessory apt.			
7/20/2009-mes: On 7/16/09 the ZBA approved a conditional use appeal for the accessory DU. - I need verification of amount of area that is to be cleared -will give to Bldg to review - WAIT for Marge's final sign off on lot clearing- The main structure was approved under the previous Shoreland Zoning requirements.			
8/31/2009-tm: spoke to Travis Berube and informed him that Marge Schmuackal still requires info on sware feet of land disturbance, He said he will have it to Marge by Tomorrow, 01 Sept 09. Will issue permit when Marge signs off.			

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Per Deborah Rutter

IR-2 Island Residential Zone Accessory Dwelling Unit

Conditional Use Appeal

DECISION

Date of public hearing: July 16, 2009

Name and address of applicant:
Nancy Jo Connelly
82 Salem St.
Portland, ME 04102

Location of property under appeal: 90 Crescent Ave., Great Diamond Island

For the Record:

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

- # Atty Cloutier
- > Nancy Jo Connelly - See above
- > Tammy Robinson - ^{Great} Diamond Island

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

- > 3 written testimonies from local abutters / 2 against
(or at least 1 island resident) / 1 questioning (?)

Findings of Fact and Conclusions of Law:

The Applicant is requesting a conditional use permit for a property located within the IR-2 zone, in order add an accessory dwelling unit. The gross floor area of the principal building is 3,993 sq. ft. and the gross floor area of the accessory dwelling unit is 1,158 sq. ft., or 29% of the gross floor area of the principal building. The lot area is 32,149 sq. ft. There are no open outside stairways or fire escapes above the ground floor.

A. Conditional Use Standards pursuant to Portland City Code §14-145.9(a)(1):

1. The accessory dwelling unit is located within and is clearly subordinate to a principal single-family detached dwelling.

Satisfied (4) Not Satisfied

Reason and supporting facts:

> Applicant plans, testimony, written documentation

2. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet.

Satisfied (4) Not Satisfied

Reason and supporting facts:

> Applicant testimony, documentation

3. The lot area shall be thirty thousand (30,000) square feet.
Satisfied (4) Not Satisfied

Reason and supporting facts:

> Application, testimony
> City confirmation

4. There shall be no open outside stairways or fire escapes above the ground floor.

Satisfied (4) Not Satisfied

Reason and supporting facts:

> Applicant / Atty testimony, documentation

5. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance.

Satisfied (4) Not Satisfied

Reason and supporting facts:

> Testimony, Submitted drawings

6. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level.

Satisfied (1) Not Satisfied

Reason and supporting facts:

> Applicant testimony, submitted plans

7. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences

Satisfied (1) Not Satisfied

Reason and supporting facts:

> Applicant testimony
> Written documentation

8. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.

Satisfied (1) Not Satisfied

Reason and supporting facts:

> Applicant testimony
> Written documentation

B. Conditional Use Standards pursuant to Portland City Code §14-474(c)(2):

1. There are unique or distinctive characteristics or effects associated with the proposed conditional use.

Yes No

Reason and supporting facts:

No compelling evidence that this application is unique

2. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area.

Yes No (1)

Reason and supporting facts:

3 letters from concerned citizens - NOTE;

Applicant testimony/written documentation indicates nothing unusual

3. Such impact differs substantially from the impact which would normally occur from such a use in that zone.

Yes No (1)

Reason and supporting facts:

Applicant testimony/documentation;

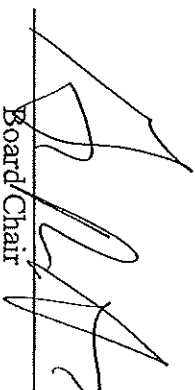
Conclusion (check one)

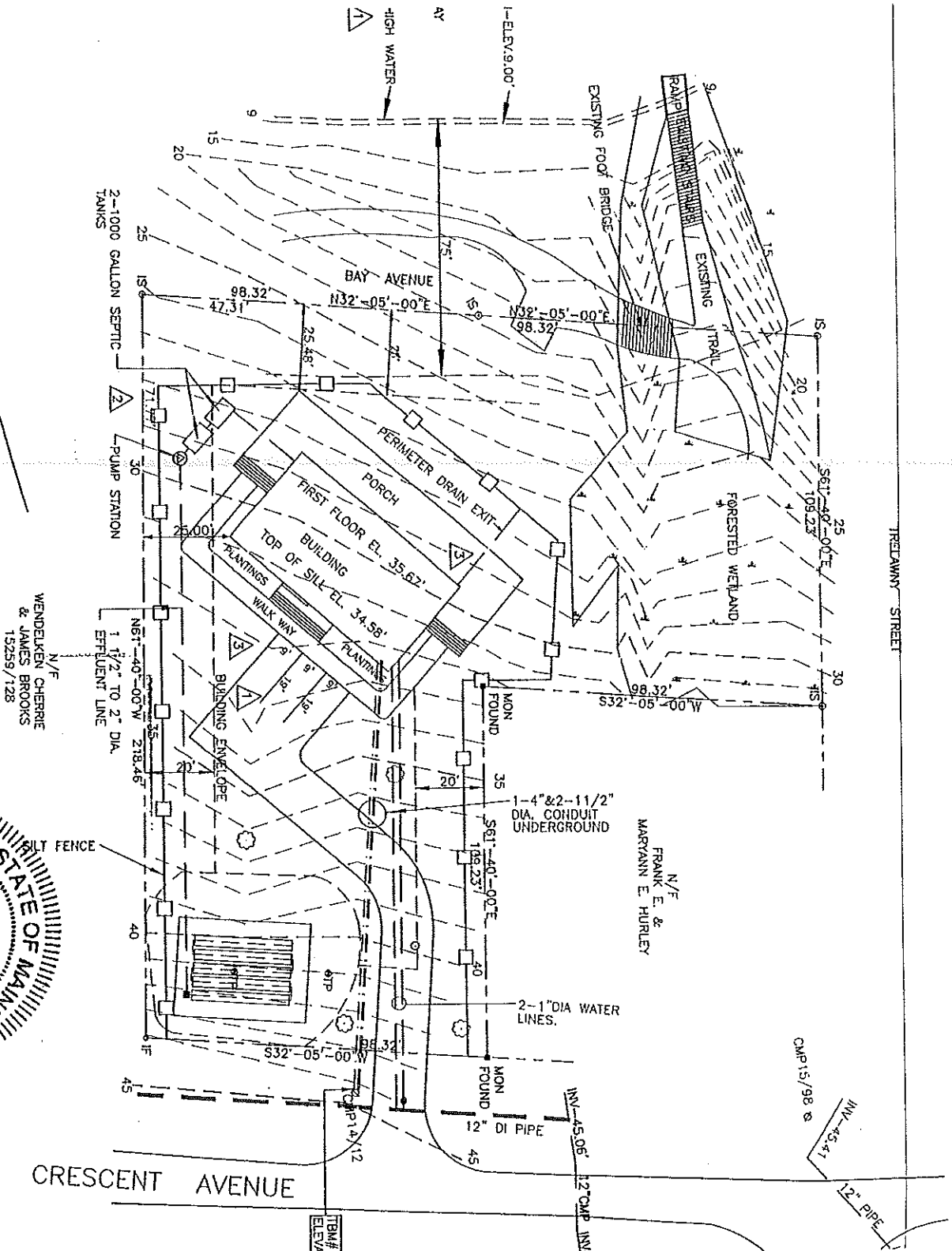
(4) Option 1: The Board finds that all of the standards (1 through 5) described in section A above have been satisfied and that not all of the factors (1 through 3) described in section B above are present, and therefore GRANTS the application.

Option 2: The Board finds that all of the standards (1 through 5) described in section A above have been satisfied, and that while not all of the factors (1 through 3) described in section B above are present, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that not all of the standards (1 through 5) described in section A above have been satisfied and/or that all of the factors (1 through 3) described in section B above are present, and therefore DENIES the application.

Dated: 7.16.09


Board Chair



NOTE
FINISH GRADE SHALL MATCH THE EXISTING GRADE.

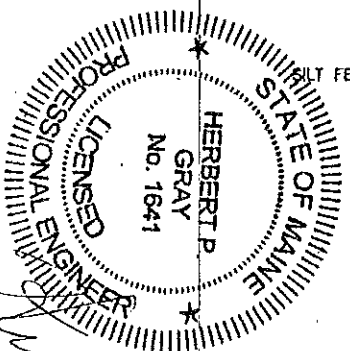
CERTIFICATION

THIS SURVEY CONFORMS TO CATEGORY 1, CONDITION III, AS DEFINED BY THE STANDARDS OF MAINE STATE BOARD OF REGISTRATION FOR LAND SURVEYORS.

HERBERT P. GRAY, PLS #387

SURVEYOR

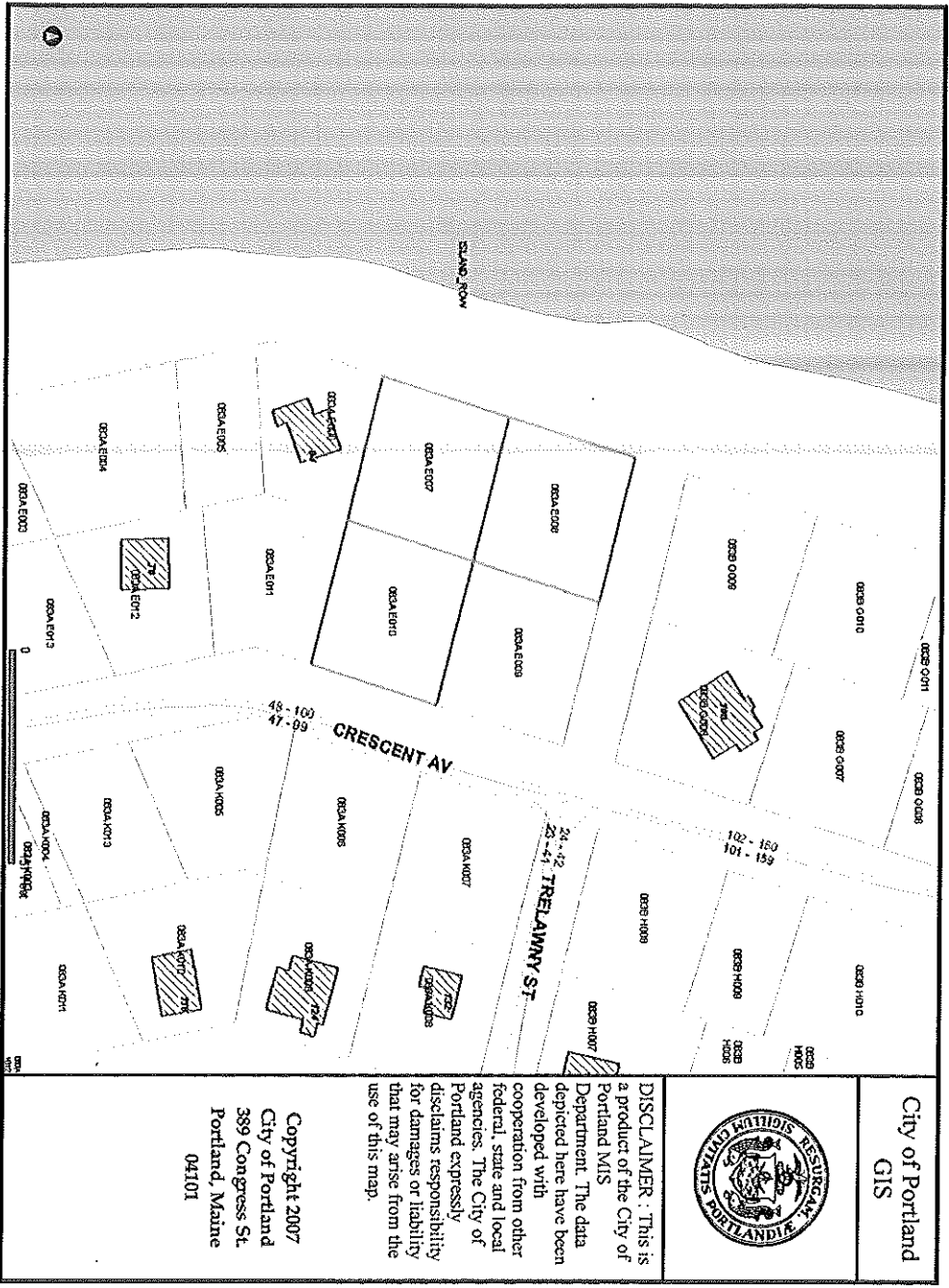
HERBERT P. GRAY
PLS #387
111 SIMMONS ROAD
SOUTH PORTLAND, MAINE
04106



Handwritten signature of Herbert P. Gray

3 2008

200



IR-2 Zone

City of Portland
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Portland, Maine
04101

FAX



To: for LOVA care of ELIZABETH WJ
Fax Number: 766-5673
From: MARG SCHWICKS
Fax Number: _____
Date: 7/16/09
Regarding: GRT & ISL. Appeal
Total Number Of Pages Including Cover: 2
Phone Number For Follow-Up: _____

Comments:

I hope this helps you

City Of Portland, Maine
Inspections Division Services

389 Congress St Room 315 Portland Me 04101-3509

Phone: (207) 874-8703 or (207) 874-8693

Fax: (207) 874-8716

<http://www.portlandmaine.gov/>

September 1, 2009

Travis Berube
67 Boothby Ave
South Portland, Maine 04106
207-939-6572
tberube@maine.rr.com

LOT CLEARING PLAN FOR 90 CRESCENT AVE

Clearing needed for house, porches and walkways: 4,871 sqft.
Clearing needed for driveway: 1,800 sqft.
Clearing needed for septic tanks and leach field: 1,240 sqft.
TOTAL NEEDED: 7,911 sqft.

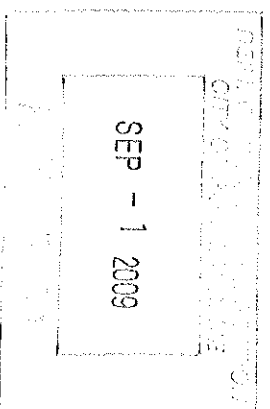
PLEASE NOTE:

- Planting is to be redone to recover clearing in areas needed to excavate septic and leach field and also around the perimeter of the building.
- No clearing whatsoever is to be done within the 75' shore land setback or the areas label wetlands; nor shall any equipment or persons operate in these areas.

Thank You,



Travis Berube



Meetings & Conversations

RE: 03A-E-7-8-10

Get to Island.

10/1/08

2:00pm

Marge's Barbara met with Herb Gray

3:00pm

Marge met with Nancy Conally with
Daphne Marge on her phone

(Discussed the completed use appeal -
The section of Ordinance is Attached to my
Notes)

10:05 AM

3/13/09

I met with Herb Gray concerning this
property - describing what was needed
for a permit app.

5/20/09

Nancy Conally attended a Shoreland Zoning
Neighborhood meeting at The Casco Bay Ferry
Terminal that Rick Knowlton presided. She
received information on the proposed blurb
regulations at that meeting.

From: Rick Knowland
To: Danielle West-Chuhita; Marge Schmuckal
Date: 6/15/2009 11:29:25 AM
Subject: Re: Great Diamond Island - Nancy Conolly

Marge, As discussed Mary Connolly attended a shoreland zoning neighborhood meeting on May 20, 2009 at the Casco Bay Ferry Terminal. She received information on the proposed bluff regulations at the meeting.

>>> Marge Schmuckal Monday, June 15, 2009 >>>
Here are the dates that I met with folks concerning this lot. I did not document the walk-in from Herb Gray who I met at the counter maybe a month ago.

October 1. Barbara B. & I met with Heb Gray at 2:00 pm to go over the property. We discussed shoreland zoning and the conditional use appeal.
On the same day at 3:00 pm I met alone with Nancy Conolly with her daughter Maggie on her phone. We discussed the conditional use appeal and shoreland zoning. I attached a copy of that appeal section to my informational notes.

March 13, 2009. At 10:00 am I met with Herb Gray concerning this property. - I described what was needed for a permit and appeal application.

June 9, 2009. This office received a building permit application for the construction of a new single family dwelling with an accessory dwelling unit as allowed under a conditional use appeal to the Zoning Board of Appeals. As of this date June 15, 2009, this office has not received a conditional use application for the July 16, 2009 concerning the accessory dwelling unit.

CC: Barbara Barhydt; Rick Knowland

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information

Card Number 1 of 1
 Parcel ID 083A E007001
 Location CRESCENT AVE
 Land Use VACANT LAND

Herb Gray - merge - BARBARA
 10/1/08
 AT 2:00 pm

GET TO ISP

Owner Address

ROBERTS DOUGLAS S ETAL
 745 JACKSON VALLEY RD
 OXFORD NJ 07863

Book/Page

Legal

13290/162
 83A-E-7-8-10
 BAY AVE TRELANNEY ST
 CRESCENT AVE
 GREAT DIAMOND ISLAND 32151 SF

*IR-2 ?
 Shore Land*

Current Assessed Valuation

Land \$157,400

Building \$ 0.00

Total \$157,400

AT 3:00 pm

Property Information

Year Built Style

Story Height

Sq. Ft.

met with Mr. Nancy Conolly with Daughter Maggie on her phone

Bedrooms

Full Baths

Half Baths

Total Rooms

Attic

Basement

Outbuildings

Type

Quantity

Year Built

Size

Grade

Condition

Sales Information

Date 08/29/1997
 03/13/1995

Type LAND
 LAND

Price \$73,000
 \$55,000

Book/Page 13290-162
 12005-126

Picture and Sketch

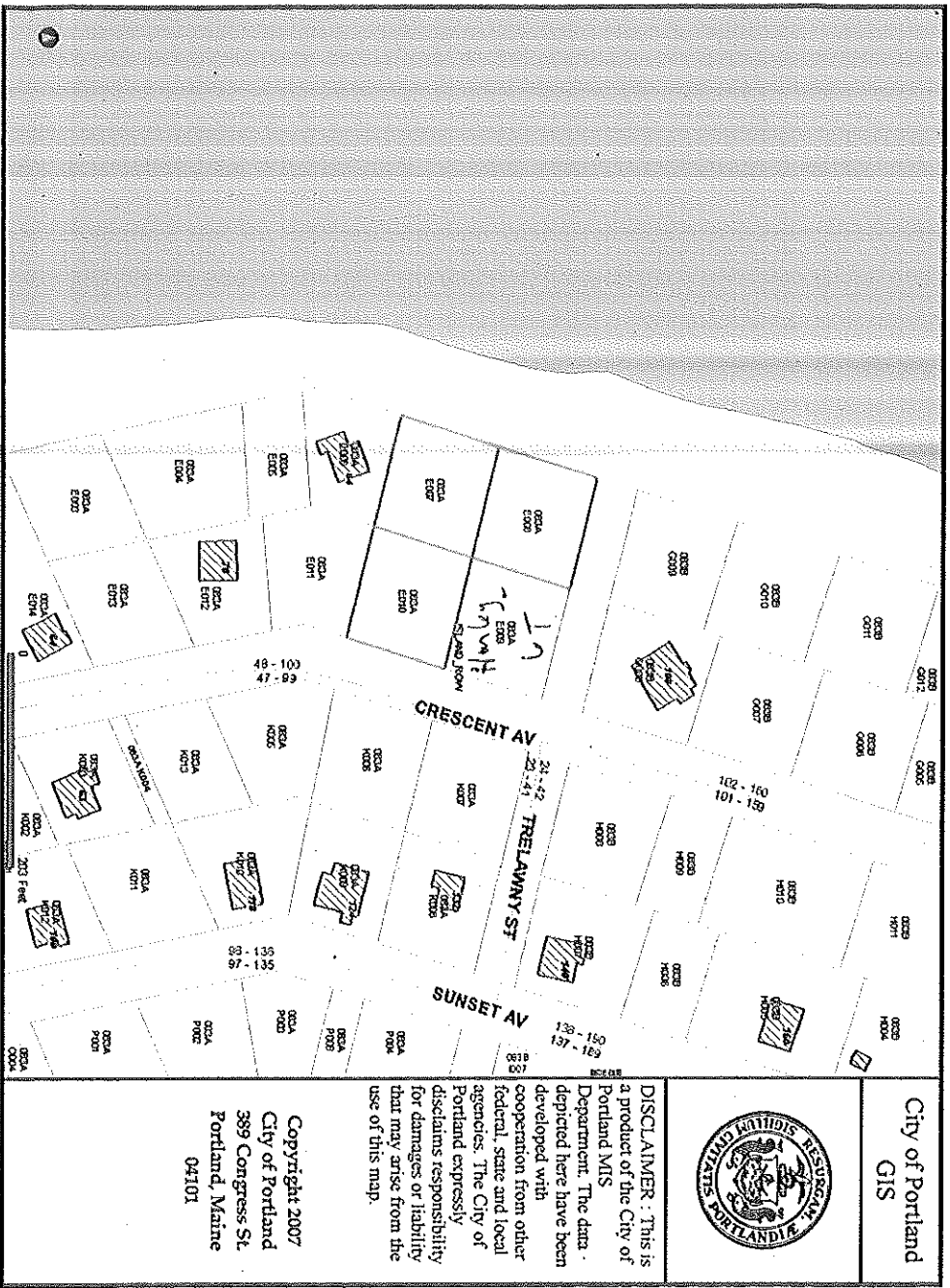
Picture

Sketch

Tax Map

Click here to view Tax Roll Information.
 Any information concerning tax payments should be directed to the Treasury office at 874-8490 or e-mailed.

[New Search!](#)



IR-2. Shoreland

05B-D-3
749

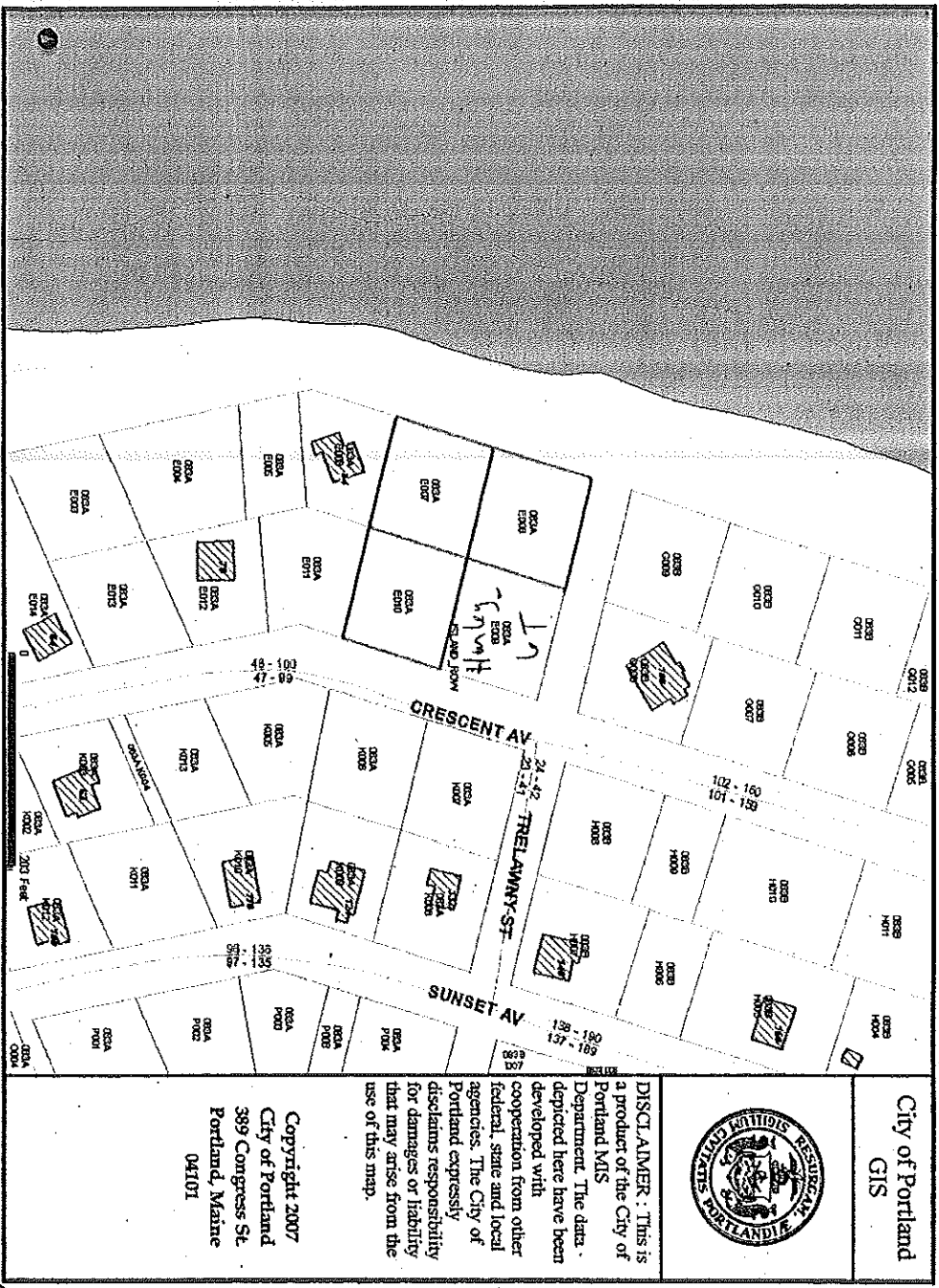
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IR-2: Shore Land

035B-D-3
749

101

LAST YEAR
Dec

3000 Smith St

775 GARDEN ST

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 provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot area shall be thirty thousand (30,000) square feet;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and

- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.

(b) *Institutional*: Any of the following uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority:

1. Schools and other educational facilities;
2. Churches or other places of worship;
3. Private clubs or fraternal organizations excluding yacht clubs and marinas;
4. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped to ensure compatibility with the surrounding neighborhood;

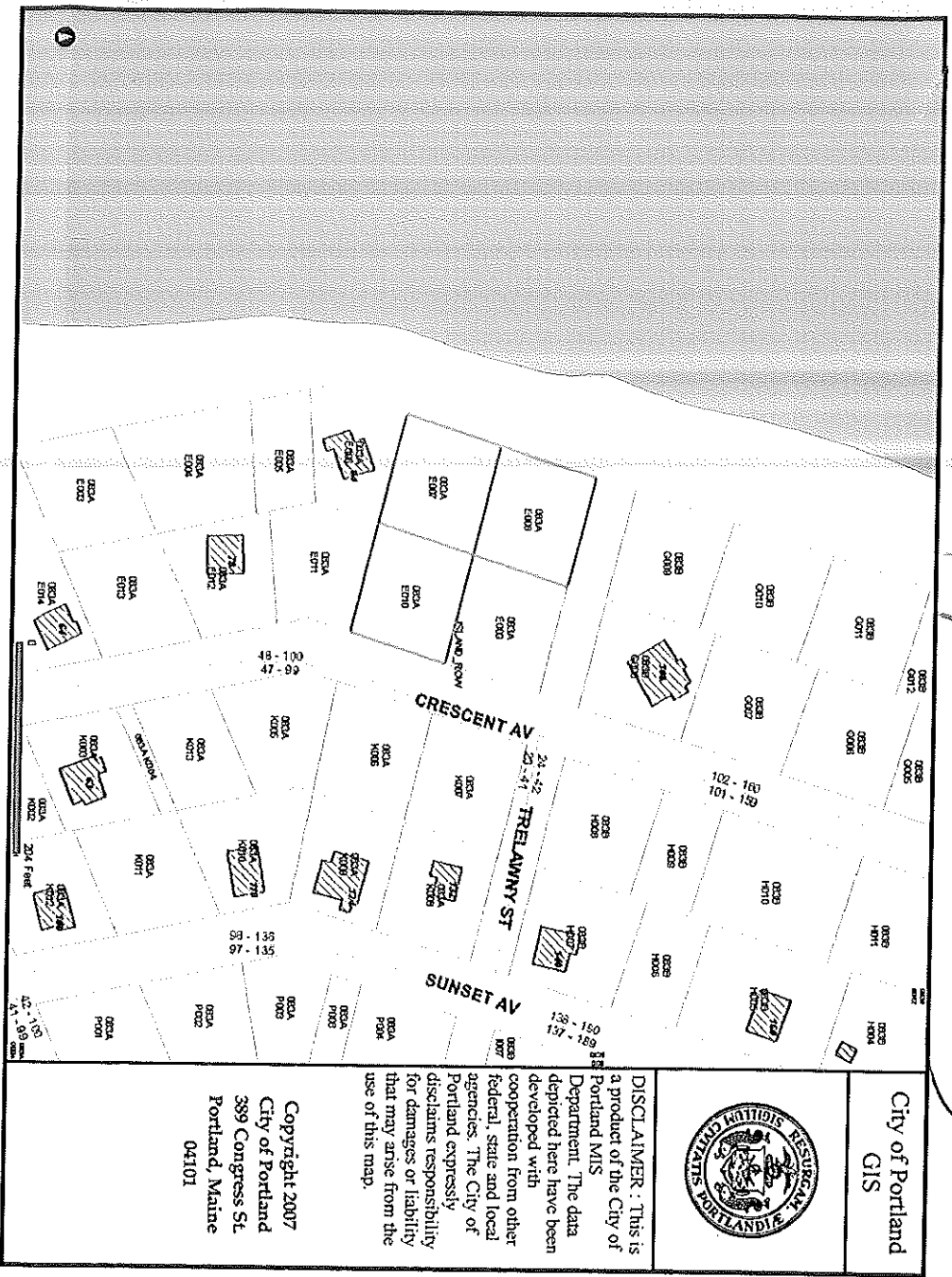
Such uses shall be subject to the following standards if the total land area of the use is two (2) acres or more:

- a. In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area;

- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of July 15, 1985, or thereafter; and

- c. In the case of a use or use expansion which constitutes a combination of the above-listed

3/13/09 Herb Girg



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net - IR-2

Conoley - Gert & ISR

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information

Card Number 1 of 1
 Parcel ID 083A E007001
 Location CRESCENT AVE
 Land Use VACANT LAND

Completed

Owner Address
 ROBERTS DOUGLAS S ETAL
 745 JACKSON VALLEY RD
 OXFORD NJ 07863

Book/Page
 Legal

13290/162
 83A-E-7-8-10
 BAY AVE TRELAWNEY ST
 CRESCENT AVE
 GREAT DIAMOND ISLAND 32151 SF

Current Assessed Valuation

Land \$157,400
 Building \$ 0.00
 Total \$157,400

Property Information

Year Built Style Story Height Sq. Ft. Total Acres

Bedrooms Full Baths Half Baths Total Rooms Attic Basement

Outbuildings Type Quantity Year Built Size Grade Condition

Sales Information

Date	Type	Price	Book/Page
08/29/1997	LAND	\$73,000	13290-162
03/13/1995	LAND	\$55,000	12005-126

Picture and Sketch
 Picture Sketch Tax Map

[Click here to view Tax Roll Information.](#)

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or e-mailed.

[New Search!](#)

051248

WARRANTY DEED

Maine Statutory Short Form

KNOW ALL MEN BY THESE PRESENTS THAT, WE, FRED C. DURST AND MARIYNN C. DURST of Falmouth, County of Cumberland and State of Maine, for consideration paid, grant to DOUGLAS S. ROBERTS AND KATRYE SUE ROBERTS, of 745 Jackson Valley Road, Oxford, NJ 07863, a one-half interest as JOINT TENANTS, and to NANCY JO CONNOLLY, a one-half interest, said half interests to be held as tenants in common, with WARRANTY COVENANTS, the following:

MAINE REAL ESTATE TAX PAID

Certain lots or parcels of land, situated on Great Diamond Island, in the City of Portland, Cumberland County, Maine, being Lots numbered 158, 159 and 160 on the southerly side of Trelawny Street at the intersection of said Trelawny Street and Bay Avenue as shown on the plan entitled "Plan of Property belonging to the Diamond Island Association," recorded in the Cumberland County Registry of Deeds in Plan Book 4, Page 62.

Said lots are also depicted on Portland Tax Map 83A, Block E as lots 7, 8 & 10. Subject to zoning and building restrictions of record, restrictive covenants and easements of record and public utilities servicing the property.

Being the premises described in the deed from C. Stuart Laughlin, Jr. to the grantors herein dated July 13, 1995 and recorded in said Registry in Book 12005, Page 126.

Witness our hands and seals this 29th day of August, 1997.

RECEIVED

RECORDED REGISTRY OF DEEDS

1997 AUG 29 PM 1:40

CUMBERLAND COUNTY

J. B. Carlin

Fred C. Durst
FRED C. DURST

Mariynn C. Durst
MARIYNN C. DURST

State of Maine
County of Cumberland

August 29, 1997

Personally appeared FRED C. DURST and MARIYNN C. DURST and acknowledged the foregoing to be their free act and deed

Before me,
Adrian G. McCarron
Adrian G. McCarron, Attorney at Law