

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Patric Santerre, Chair
Catherine Decker, Secretary
Nan Sawyer
Julie Brady
Joe Lewis
Kimberly Boggiatto
William Hall

September 30, 2002

John C. Walker, P.A.
1321 Washington Avenue
Portland, ME 04103

RE: 10 Marlborough Road
CBL: ~~4~~09-F-7, 8, 9, 12, 13
ZONE: R-3 Zone with Stream Protection overlay

Dear Attorney Walker,

As you know, at its September 19, 2002 meeting, **the Board of Appeals voted 5-1 to grant with conditions** your Variance Appeal requesting a 48' setback from the high water mark instead of the required 75' (section 14-453). The applicant also requested a side setback of 6.0' instead of the required 8' (section 14-90). This would be for the purpose of erecting a 360 square foot, two level deck. The conditions imposed were as follows.

- (a) The board granted relief from section 14-453 (Stream Protection Zone) to permit a setback of 48 feet from the high water mark, instead of the 75 foot setback required by the ordinance.
- (b) The two-level deck depicted on the plans filed with the application may be erected, but that structure shall conform to the side setback requirement of eight feet.

Conditions of the Variance:

- (a) The deck which is authorized by the variance may not increase the floor area nor the volume of the existing structure by more than 30 per cent (30%).
- (b) The deck authorized by this section will be deemed to be the "one-time expansion" authorized by Port. Mun. Code, section 14-453.
- (c) The future enclosure of the said deck is deemed to be permitted by this variance.

Recording of Variance:

Pursuant to 30-A M.R.S.A., subsection 4253 (5), **this Certificate must be recorded in the Cumberland County Registry of Deeds within 90 days** from the date of the final written approval of the variance or the variance will be void. Evidence of such recording shall be provided to the Zoning Administrator with a copy of the Certificate which bears evidence of its being recorded.

The permit application, which is presently on file, will be on hold until a revised plan showing the approved setbacks and copy of the certificate of variance recording is provided to this office.

Should you have any questions please do not hesitate to contact either Jodine Adams, Office Manager or myself.

Enclosed you will find a copy of the Boards decision.

Sincerely,

Marge Schmuckal
Zoning Administrator



CITY OF PORTLAND

July 18, 2002
Kathleen Hayes & John McGonagle
10 Marlborough Road
Portland, ME 04103

RE: 10 Marlborough Road – 409-F-007 - R-3 Zone with a Stream Protection overlay zone

Dear Kathleen and John,

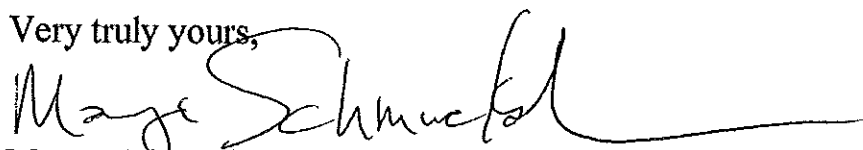
I am in receipt of your permit application to construct a two level deck on your house located at 10 Marlborough Road. As I mention on the phone to you today, this deck is being shown to be within 41 feet of the high water mark of the Fallbrook Stream. Section 14-453 requires that a structure be no closer than seventy-five (75) feet from the high water mark. I am attaching a copy of this ordinance. You are also showing a side setback of 5.5 feet. The R-3 residential zone requires an eight (8) foot side setback for a single story (section 14-90).

Because you are not meeting the Stream Protection setback and the required side setback, this permit is being denied.

You have the right to appeal this decision (section 14-472 & 473). If you wish to exercise your right to appeal, legally you have thirty (30) days in which to appeal. I have included the necessary paperwork that you will need in order to file an appeal. Please note that the requirements for a variance appeal are very severe and are rarely granted by the Board. The Board will need a site plan that shows exactly where the 75 foot line is on your property and exactly where the deck is proposed.

I am also unsure of where this property sits in relationship to the floodplain (panel 7). I would request that your surveyor also delineate the location of the floodplain. If the deck is located within the floodplain, the first floor height would be required to be two (2) feet above the given flood elevation.

Very truly yours,


Marge Schmuckal, Zoning Administrator