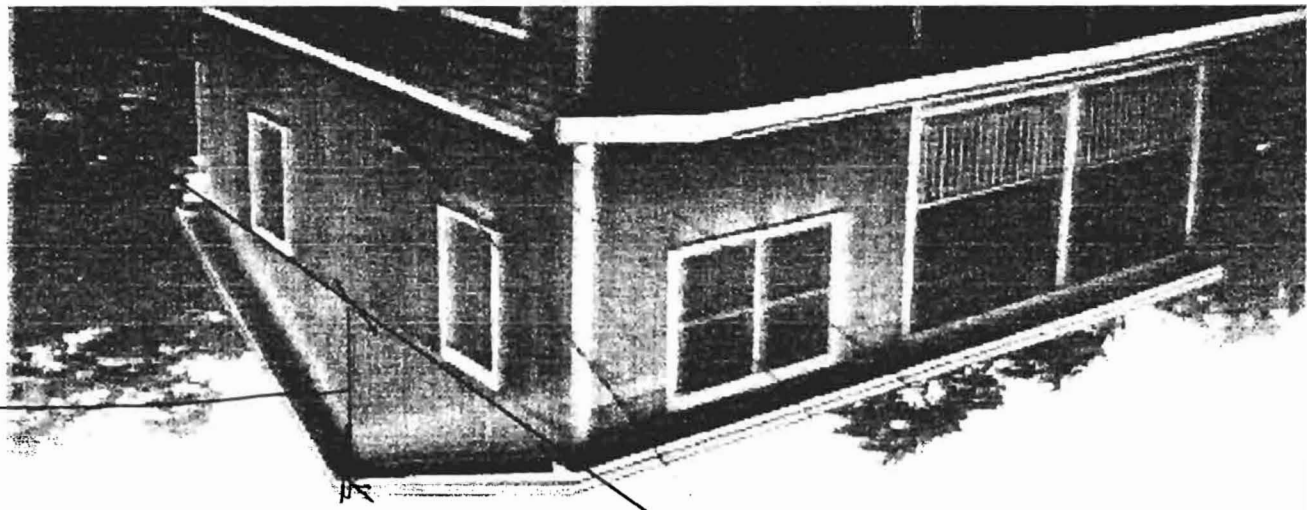
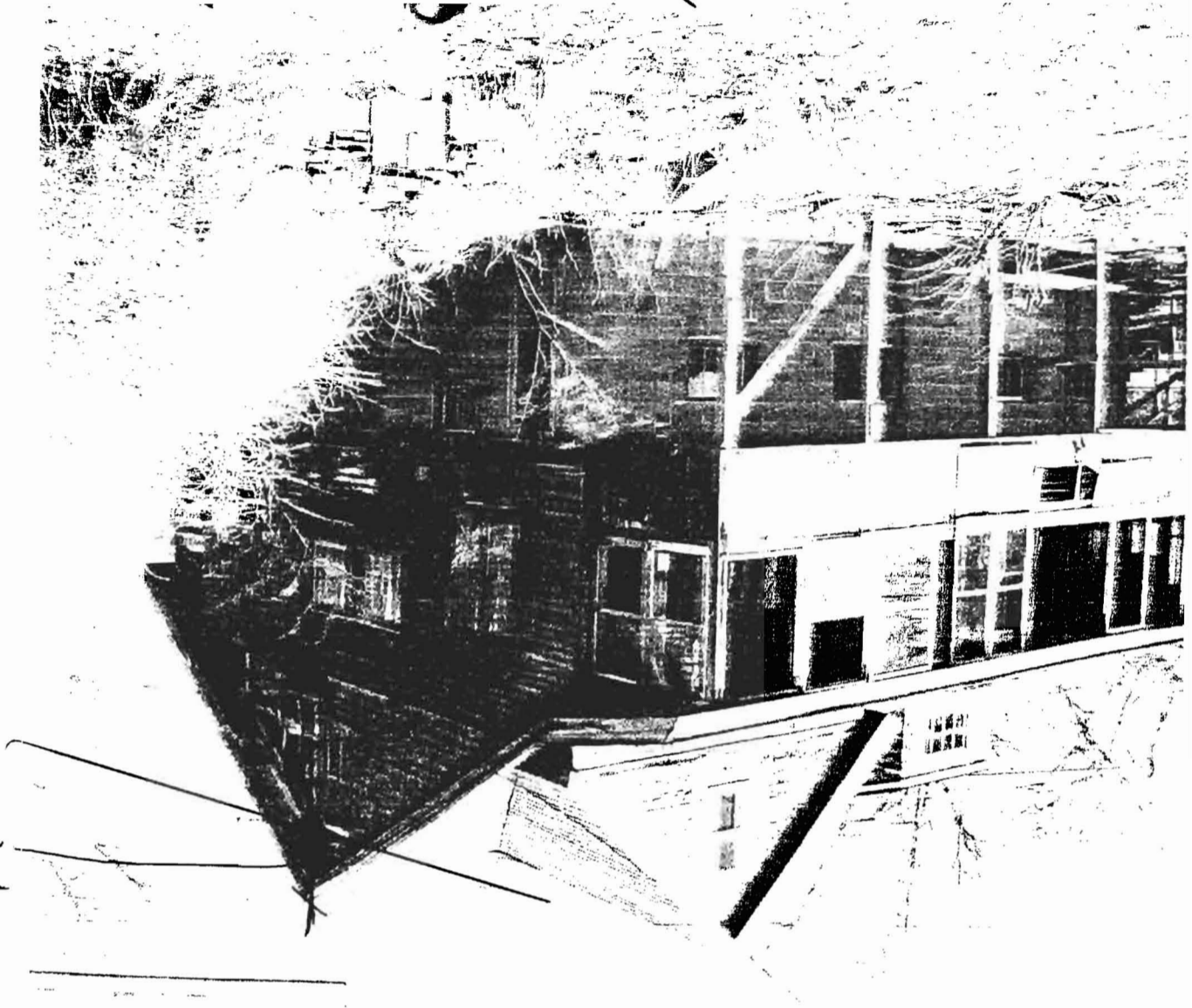


Depth



Depth



Southeast Elevation



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

June 25, 2009

Jonathan L. Goldberg
Mittel Asen LLC
85 Exchange Street
PO Box 427
Portland, ME 04112

RE: 38 Torrington Avenue, Peaks Island – 084-S-006

Dear Attorney Goldberg,

I am enclosing copies of information that have been submitted from Horizon Builders, Inc. I requested more information from them to make my determination concerning the remand from Superior Court. I wanted to be sure you had copies of all new materials. I have not finalized my decision.

Very truly yours,

Marge Schmuckal
Zoning Administrator

Cc: File

The Ultimate In
Beauty And
Durability For
Your Home.

www.askthebuilder.com

Scissors Truss Design

By Tim Carter
©1993-2009 Tim Carter

Summary: A scissors truss provides the benefits of a vaulted ceiling in the same framing time as standard roof trusses. Structural software customize the roof truss to your home roof pitch. Use standard trusses in part of your home and the scissors trusses other sections. Explore all truss options with your builder for custom results.

Truss Display
Find Providers of Truss Displays. The Online Business Directory.
www.Business.com

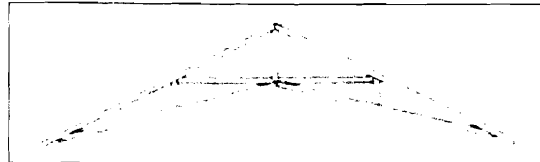
Truss
Free design assistance. Convention Booth, Trade Shows, Exhibit, Display
www.Premier-Lighting.com

Roof Construction
Searching For Roof Construction? See Our Roof Construction Guide
sellsyourcornerstore.com

Marlborough Roof Trusses
Call Our Comprehensive Roofing Company for Roofing and Remodeling!
www.Premier-Lighting.com

Scissors Truss Design

A scissors truss is a really cool roof framing option. You not only get the speed of framing that you get with common trusses benefits of an interior sloped ceiling. The slope of the interior ceiling is always controlled by the slope of the exterior roof surface. The trusses use sophisticated software to design the trusses. You provide the span of the roof and the desired exterior software does the rest. You can ask the structural engineer at the truss fabrication plant if there is a way to increase the interior will get much more than one half the slope of the exterior roof surface.



http://www.askthebuilder.com/B348_Scissors_Truss_Design_.html

cated in the immediate vicinity of the bottom landing of the stairway.

Exception: An artificial light source is not required at the top and bottom landing, provided an artificial light source is located directly over each stairway section.

R303.6.1 Light activation. The control for activation of the required interior stairway lighting shall be accessible at the top and bottom of each stairway without traversing any steps. The illumination of exterior stairways shall be controlled from inside the dwelling unit.

Exception: Lights that are continuously illuminated or automatically controlled.

R303.7 Required glazed openings. Required glazed openings shall open directly onto a street or public alley, or a yard or court located on the same lot as the building.

R303.7.1 Roofed porches. Required glazed openings may face into a roofed porch where the porch abuts a street, yard or court and the longer side of the porch is at least 65 percent open and unobstructed and the ceiling height is not less than 7 feet (2134 mm).

R303.8 Required heating. When the winter design temperature in Table R301.2(1) is below 60°F (16°C), every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in all habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section.

SECTION R304 MINIMUM ROOM AREAS

R304.1 Minimum area. Every dwelling unit shall have at least one habitable room that shall have not less than 120 square feet (11.2 m²) of gross floor area.

R304.2 Other rooms. Other habitable rooms shall have a floor area of not less than 70 square feet (6.5 m²).

Exception: Kitchens.

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens.

R304.4 Height effect on room area. Portions of a room with a sloping ceiling measuring less than 5 feet (1524 mm) or a furred ceiling measuring less than 7 feet (2134 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room.

SECTION R305 CEILING HEIGHT

R305.1 Minimum height. Habitable rooms, hallways, corridors, bathrooms, toilet rooms, laundry rooms and basements

shall have a ceiling height of not less than 7 feet (2134 mm). The required height shall be measured from the finish floor to the lowest projection from the ceiling.

Exceptions:

1. Beams and girders spaced not less than 4 feet (1219 mm) on center may project not more than 6 inches (152 mm) below the required ceiling height.
2. Ceilings in basements without habitable spaces may project to within 6 feet, 8 inches (2032 mm) of the finished floor; and beams, girders, ducts or other obstructions may project to within 6 feet, 4 inches (1931 mm) of the finished floor.
3. Not more than 50 percent of the required floor area of a room or space is permitted to have a sloped ceiling less than 7 feet (2134 mm) in height with no portion of the required floor area less than 5 feet (1524 mm) in height.
4. Bathrooms shall have a minimum ceiling height of 6 feet 8 inches (2036 mm) over the fixture and at the front clearance area for fixtures as shown in Figure R307.2. A shower or tub equipped with a showerhead shall have a minimum ceiling height of 6 feet 8 inches (2036 mm) above a minimum area 30 inches (762 mm) by 30 inches (762 mm) at the showerhead.

SECTION R306 SANITATION

R306.1 Toilet facilities. Every dwelling unit shall be provided with a water closet, lavatory, and a bathtub or shower.

R306.2 Kitchen. Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink.

R306.3 Sewage disposal. All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

R306.4 Water supply to fixtures. All plumbing fixtures shall be connected to an approved water supply. Kitchen sinks, lavatories, bathtubs, showers, bidets, laundry tubs and washing machine outlets shall be provided with hot and cold water.

SECTION R307 TOILET, BATH AND SHOWER SPACES

R307.1 Space required. Fixtures shall be spaced as per Figure R307.2.

R307.2 Bathtub and shower spaces. Bathtub and shower floors and walls above bathtubs with installed shower heads and in shower compartments shall be finished with a nonabsorbent surface. Such wall surfaces shall extend to a height of not less than 6 feet (1829 mm) above the floor.



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

TO: CHAIR AND MEMBERS OF THE ZONING BOARD OF APPEALS
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR
SUBJECT: 38 TORRINGTON AVENUE, PEAKS ISLAND, 084-S-006 – IR-2
DATE: JULY 1, 2009

As per instructions after the decision of Superior Court, I have reviewed the existing application for expansion using section 14-436(a) of the Land Use Zoning Ordinance which states:

“For principal structures lawfully nonconforming as to land area per dwelling unit as of July 19, 1988: The floor area of the expansion shall be limited to no more than fifty (50) percent of the first floor footprint. The additional floor area shall be created in the uppermost floor by the use of dormers, turrets or similar structures needed to provide the minimum height required for habitable space while preserving the existing roof configuration to the maximum extent possible.”

I have interpreted this section to provide four basic tasks that must be met for compliance.

There is an expansion limit of no more than fifty (50) percent increase of the first floor footprint. The first floor footprint is 1423 square feet in size which results in an allowable increase of 711.5 square foot in the uppermost floor. The existing square footage prior to renovations in the uppermost floor was 394.55 square feet. The after renovation floor area of the second floor is 858.69 square feet. Thus, the increase of floor area results in 464.14 square feet which is under the 50% allowable of 711.5 square feet. The first task has been met.

The method of construction to allow the 50% increase includes dormers, turrets or similar structures. The original roof was a pitched roof with several types of small dormers. See picture “A”. The new construction essentially became an addition of two full dormers. Therefore, I have determined that the method of construction allowed by 14-436(a) has been met.

Mr. William Childs of Horizon Builders, Inc. also submitted a sketch showing the original roof configuration overlaid upon the new construction (drawing “B”). That sketch shows that the head room of the original and new structure. 14-436(a) allows the permitted expansion to be enough for minimum height for habitable space. The plans

show that the height from unfinished floor to the average ceiling height is 7' 8 3/8". The new space is providing the minimum height required under the building code which is 7'. It is noted that the ordinance regulates the minimum height and not the maximum height. It does not say that the ceiling shall be no more than the minimum required. This third task is being met.

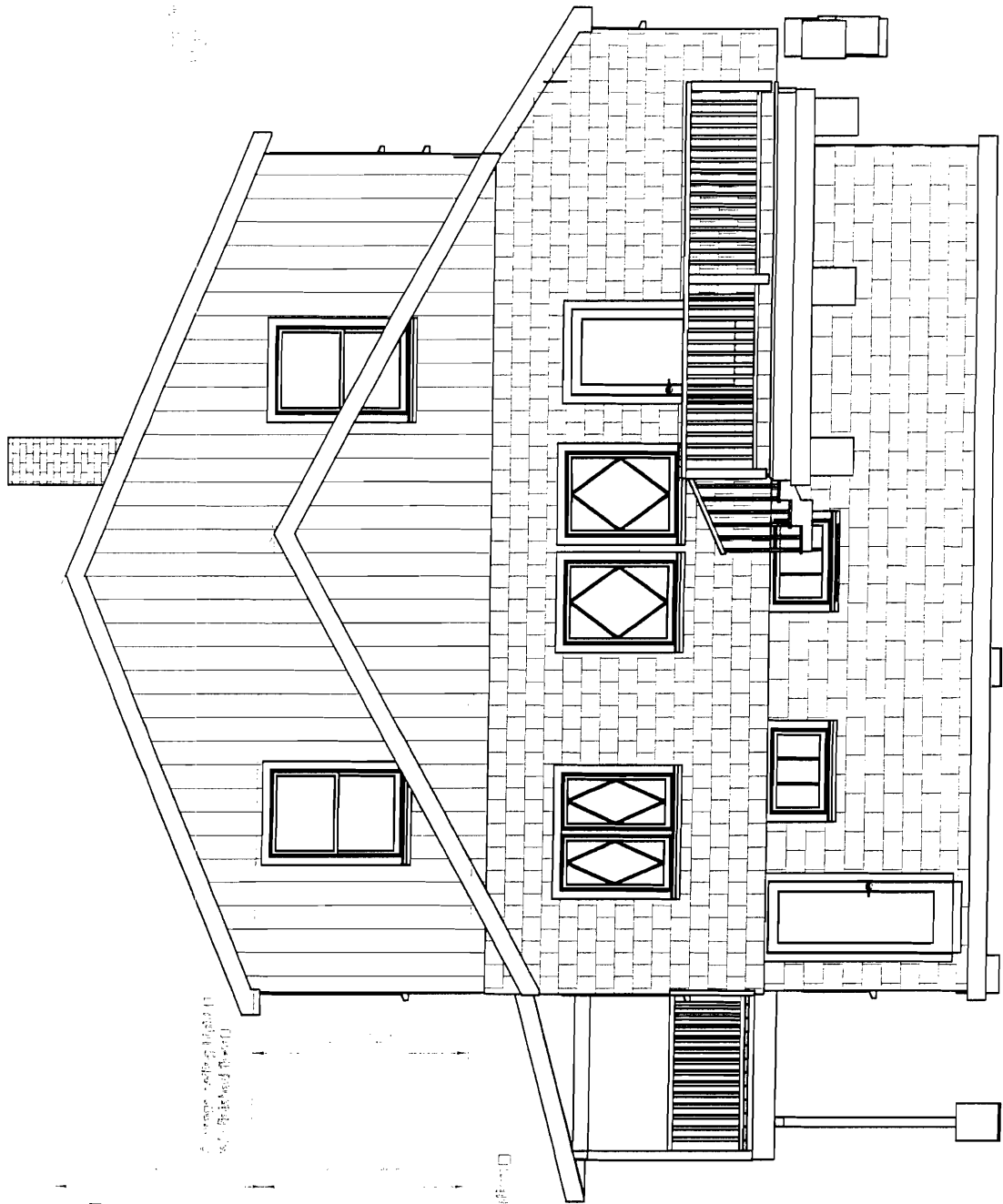
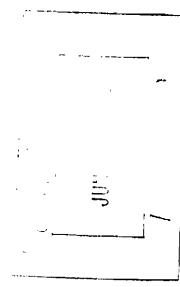
Section 14-436(a) finally states that the expansion limit and method, achieving at least the minimum height for habitable space, must also preserve the existing roof configuration to the maximum extent possible. I have use the submitted sketch to show what the effect of two full dormers without a change to the roof configuration would look like. The structure would essentially become a flat roof building with the original pitch roof configuration gone. See figure "C". This final bar in the ordinance allows for the exiting roof configuration to be maintained. The word "configuration" is a key word. It does not say that the roof must remain flat if there is an addition of two full dormers. Therefore, I believe that it is allowable, and probably encouraged, to add a new roof above the dormers if it matches the existing roof configuration to the maximum extent possible. Looking at both sketch submittal "B" and the before and after pictures "D", I do not believe the new roof line preserved the existing roof configuration to the maximum extent possible. The trusses have a different pitch and a taller depth from the bottom cord to the top of the peak. The roof's final design does not meet the wording of 14-436(a).

Taken in whole, using section 14-436(a) for review, this project does not comply with the ordinance.



11 B

11 B



11 B

11 B

11 B

11 B

11 B

11 B

11
Southeast Elevation



STATE OF MAINE
CUMBERLAND, ss

MAY 23 2009

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-08-035

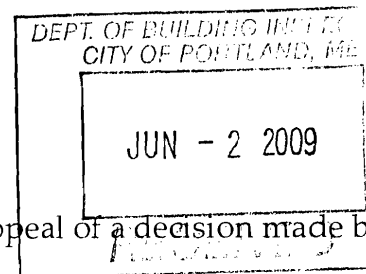
RECEIVED

ALFRED AYDELOTT, ADRIENNE GISKE,
CLAIRE FILLEITTAZ, MONIQUE LEVESQUE,
AND DONNA MARSTON,
Petitioners

v.

CITY OF PORTLAND-
ZONING BOARD OF APPEALS,
PATRICIA ASHTON, AND RICHARD ASHTON,
Respondents

ORDER ON
80B APPEAL



Before the Court is Petitioners' M.R. Civ. P. 80B appeal of a decision made by the City of Portland Zoning Board of Appeals.

BACKGROUND

Defendants Richard and Patricia Ashton ("Ashtons") own a single-family home at 38 Torrington Avenue, Peaks Island, Maine (hereinafter "the Property"). The Property is located in the "IR-2 Island Residential Zone" (hereinafter "IR-2 Zone") pursuant to the City of Portland Land Use Code of Ordinances (hereinafter "Ordinance").

The parties agree that the Property is legally nonconforming with respect to various provisions of the Ordinance. The Ashtons' home is nonconforming with respect to the front, side, and rear setbacks.¹ Additionally, the home on the Property is nonconforming with respect to both the maximum lot coverage of twenty percent² and the minimum setback from the normal high water line.³ Finally, the Property is

¹ See Ordinance Section 14-145.11(c) for the minimum yard dimensions. R. at Tab 6:10-12.

² See Ordinance Section 14-145.11(d) for the maximum lot coverage. R. at Tab 6:12.

³ The Petitioners cite Ordinance Section 14-145.11(d) for this proposition, but this provision does not relate to the normal high water line. Rather, Section 14-449 is applicable. Supp. R. at 14-453. This section was not included in the original 80B record. After the hearing held on May 8, 2008, the parties agreed to submit the Ordinance in its entirety. The City submitted the Ordinance on May 11, 2009. It is worthy of mention that an "[a]ppellant has the

I. Standard of Review

The operative decision for judicial review is the decision of the ZBA, rather than the decision of the building authority. See *Stewart v. Town of Sedgwick*, 2000 ME 157, ¶¶ 4-5, 757 A.2d 773, 775. In appeals brought pursuant to M.R. Civ. P. 80B, this Court reviews an administrative decision for errors of law, abuse of discretion or findings of fact unsupported by the record. *Yates v. Town of Southwest Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168. The Court has jurisdiction over this matter pursuant to 30-A M.R.S. 2691(3)(G) (2008).

Questions of law, which include determinations of the meaning of ordinances, are reviewed *de novo*. *Jade Realty Corp. v. Town of Eliot*, 2008 ME 80, ¶ 7, 946 A.2d 408, 410. As for questions of fact, the Court employs the “substantial evidence” standard, which is the same as the “clear error” standard used by the Law Court to review fact-finding by a trial judge. *Gulick v. Bd. of Envtl. Protection*, 452 A.2d 1202, 1207-08 (Me. 1982). Under this standard, the issue before the reviewing court “is not whether it would have reached the same conclusion as the [administrative tribunal], but whether the record contains competent and substantial evidence that supports the result reached.” *Seider v. Bd. of Exam’rs of Psychologists*, 2000 ME 206, ¶ 8, 762 A.2d 551, 555 (internal quotation omitted). “Substantial evidence is evidence that a reasonable mind would accept as sufficient to support a conclusion.” *York v. Town of Ogunquit*, 2001 ME 53, ¶ 6, 769 A.2d 172, 175.

The burden of persuasion in an action challenging an administrative decision rests on the party seeking to overturn its decision. See *Sawyer Envtl. Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179, ¶ 13, 760 A.2d 257, 260. Thus, in this case, the Petitioners bear this burden.

nonconforming as to any yard setback: The floor area of the expansion shall be limited to no more than eighty (80) percent of the first floor footprint. The additional floor area shall be created by raising the existing roof configuration the minimum amount required to create an additional story of habitable space, or by the use of dormers, turrets or similar structures.

Building expansions under this section may occur only once during the lifetime of an existing structure.

R. at Tab 6:4 (emphasis added).

Stated differently, the limits for expansion, and the means of expansion, depend on whether the structure is “lawfully nonconforming as to land area per dwelling unit.” *Id.* If it is “lawfully nonconforming as to land area per dwelling unit” then the expansion can only be 50% of the first floor footprint and the expansion also must use dormers, turrets or similar structures to achieve the desired results. *Id.* If, however, the structure is “conforming as to land area per dwelling unit” then the expansion can be as much as 80% of the first floor footprint and the expansion may either raise the roof configuration or use dormers and the like to achieve the desired results. *Id.*

In the Decision, the ZBA stated that “[m]inimum land area per dwelling unit is a term of art w/ [sic] a separate meaning from minimum lot size; omission of min. [sic] land per dwelling unit in island zone was intentional.” R. at Tab 7:4. The Petitioners argue that common sense compels the conclusion that “land area per dwelling unit” can only mean “minimum lot size” in the context of a zone where only single-family homes are permitted. In other words, in the context of a single dwelling unit (as is the case here) the minimum lot size and the minimum land area per dwelling unit are always exactly the same. To say otherwise, argue the Petitioners, “defies logic and ignores the generally accepted meanings of those words.” Pets’ Br. at 6. In opposition, the Ashtons and the City contend that these two phrases are not synonymous. In

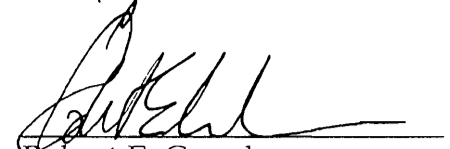
v. One Blue Corvette, 1999 ME 98, ¶ 7, 732 A.2d 856, 857. Undefined terms are given "their common and generally accepted meaning unless indicated otherwise by their context in the ordinance." *Jade Realty Corp.*, 2008 ME 80, ¶ 7, 946 A.2d at 411 (internal quotation omitted). In doing so, "[t]he terms or expressions in an ordinance are to be construed reasonably with regard to both the objectives sought to be obtained and the general structure of the ordinance as a whole." *Id.* ¶ 9, 946 A.2d at 411.

Although the phrase "land area per dwelling unit" is not defined in the Ordinance, the term "dwelling unit" is defined as "[o]ne (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit." Supp. R. at 14-17. "Land area" is not defined. However, its definition can be gleaned from the definitions of other similar phrases used throughout the Ordinance and from the common and generally accepted use of this phrase. For example, "Lot area" is defined as "[t]he area of land enclosed within the boundary lines of a lot." Supp. R. at 14-22. The term "Gross area" is defined as "[s]quare footage of land area. . . ." Supp. R. at 14-18. And, finally, "Net land area" is also defined. Supp. R. at 14-25. It provides a calculation whereby other measurements are subtracted from the gross area. *Id.* More generally, "area" is defined as "[t]he measure of a planar region or of the surface of a solid." *Webster's II New College Dictionary* 59 (2001). Similar to the zones listed in note 6 *supra*, Division 7.2, entitled "IR-2 Island Residential Zone,"⁷ expressly subjects the IR-2 Zone to the provisions of Division 25, entitled "Space and Bulk Regulations and Exceptions." Division 25 includes Section 14-436.

In interpreting the Ordinance as a whole, as the Court must, "land area per dwelling unit" is, quite obviously, a dimensional and density requirement. It could simply be defined as the minimum square footage of land necessary for a dwelling unit.

⁷ This division provides the zoning details for the IR-2 Zone.

Dated at Portland, Maine this 21st day of May, 2009.


Robert E. Crowley
Justice, Superior Court

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

CITY CLERK

2008 NOV 21 P 3 33

Issuance of Building Permit in IR-2 Zone:

Interpretation Appeal

DECISION

Date of public hearing: November 13, 2008

Name and address of applicant: Alfred Aydelott & Adrienne Giske
36 Oak Avenue
Peaks Island

Donna Marston
38 Oak Avenue
Peaks Island

Claire Filleittaz & Monique Levesque
13 Greenwood Street
Peaks Island

Location of property under appeal: 38 Torrington Avenue
Peaks Island

For the Record:

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

Jonathan Goldberg, esq., for Applicant
Alfred Aydelott
Adrienne Giske
Claire Filleittaz
Danna Marston

opposed to Appeal

Tom Childs 113 Blake Rd., SandisH

- Permit Applicant

- Horizon Builders

Bill Childs, 138 Plymouth St, Westbrook

- Horizon Builders

Chris Robinson ; Homeowner's Sister

2008 NOV 21 P 3:33

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

- Elevations + plans (proposed) submitted by Alfred Aydelott
 - Photos + plans submitted by Tom Childs
 - Photos taken by Building inspector submitted by MARGIE
 - Photo submitted by Danna MARSTON
 - Letter from MARGIE to MR. Aydelott, Sept. 27, 2004 submitted by Goldberg
 - Email from PAT ASHTON to ATTY. Goldberg, submitted by ATTY. Goldberg
- Findings of Fact and Conclusions of Law:
 The Board's authority to review an interpretation of the building authority is pursuant to Section 14-472 of the zoning ordinance.

The City issued a building permit on September 18, 2008 for expansion of a single family residence located at 38 Torrington Avenue. The expansion was permitted pursuant to section 14-436(b) of the City Code. The language of that ordinance states as follows:

Sec. 14-436. Building extensions.

Existing non-residential and residential principal structures which are nonconforming as to any area and/or yard requirements may be enlarged within the existing footprint subject to the following provisions:

- (a) *For principal structures lawfully nonconforming as to land area per dwelling unit as of July 19, 1988:* The floor area of the expansion shall be limited to no more than fifty (50) percent of the first floor footprint. The additional floor area shall be created in the uppermost floor by the use of dormers, turrets or similar structures needed to provide the minimum height required for habitable space while preserving the existing roof configuration to the maximum extent possible.
- (b) *For residential principal structures conforming as to land area per dwelling unit as of July 19, 1988, but lawfully nonconforming as to any yard setback or nonresidential principal structures that are lawfully nonconforming as to any yard setback:* The floor area of the expansion shall be limited to no more than eighty (80) percent of the first floor footprint. The additional floor area shall be created by raising the existing roof configuration the minimum amount required to create an additional story of habitable space, or by the use of dormers, turrets or similar structures.

Building expansions under this section may occur only once during the lifetime of an existing structure.

Appellant has demonstrated that the issuance of the building permit was incorrect or improper for one of the following reasons:

- 1. The incorrect area of the existing first floor was used in calculating the allowable expansion.

City's interpretation is reasonable regarding definition of footprint to include decks; nothing

- 2. The allowable expansion should have been calculated under section 14-436(a), which would have reduced the allowable expansion from 80% of the first floor footprint to 50%.

Minimum land area per dwelling unit is a term of art w/ a separate meaning from minimum lot size; omission of min. land per dwelling unit

- 3. The incorrect area of the second floor was used in calculating the allowable expansion.

in island zone was intentional? No evidence that calculation was incorrect

- 4. The property was previously expanded under permit no. 06-0650 and is therefore ineligible for further expansion in accordance with section 14-436.

testimony, photos + prior permit that earlier work did not expand base

- 5. The existing foundation is structurally insufficient and does not meet the current building code.

N/A no inspection

Satisfied

Not Satisfied

Reason and supporting facts:

6. Should city exclude or include existing ATTIC space in allowable expansion

- Exclude existing space from expansion calculation

7. was minimum amount of ~~expansion~~ weight used to achieve allowable expansion

- include 14.421(B) Additional sheet of space above

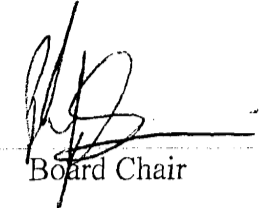
Decision: (check one)

CITY CLERK

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Code Enforcement Officer 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 Code Enforcement Officer was incorrect or improper, and therefore DENIES the application.

Dated: 11/13/08


Board Chair

O:\OFFICE\FORMS\Interpretation Appeal\building\permit\shon



**City of Portland, Maine
Planning and Development Department
Zoning Board of Appeals
Interpretation Appeal Application**

Applicant Information:

SEE ATTACHMENT

Name

Business Name

Address

Telephone

*Jonathan S. Snodgrass Representing Billingy For Alfred Aydelott & Adlenee Triske owners of 36 Oak Avenue
13 Humwood St
Monsieque Dubesque*

Applicant's Right, Title or Interest in Subject Property:

Owners of neighboring properties;
(e.g. owner, purchaser, etc.): SEE ATTACHMENT

Current Zoning Designation: 1R - 2, Shoreland

Existing Use of Property:

Residential

Type of Relief Requested:

Revocation of Building Permit No. 08-1166

Subject Property Information:

38 Torrington Avenue, Peaks Island

Property Address

84 - S - 6

Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Richard and Patricia Ashton

Name

50 Silverhill Road

Address

Milford, MA 01757

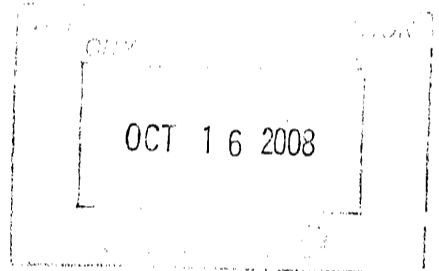
Telephone

Fax

Disputed Provisions from Section 14 - 436, 14-449, 14-47

Order, decision, determination, or interpretation under dispute:

Building Permint No. 08 - 1166



NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Signature of Applicant

Date

[Handwritten Signature]

10/16/08

MITTELASEN,LLC

ATTORNEYS AT LAW
P.O. BOX 427
PORTLAND, ME 04112-0427

ROBERT E. MITTEL
MICHAEL P. ASEN
PETER G. CARY
DIANE DUSINI
JONATHAN L. GOLDBERG
BARRY E. SCHKLAIR
SUSAN S. BIXBY
MERRITT T. HEMINWAY

85 EXCHANGE STREET, 4th FLOOR
PORTLAND, MAINE 04101

PHONE 207 775-3101
FAX 207 871-0683

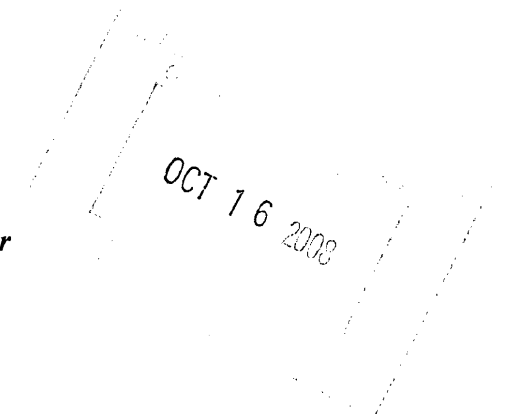
jgoldberg@mittelasen.com

October 16, 2008

VIA HAND DELIVERY

Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

Re: ***Appeal of Decision of the Zoning Administrator
to Issue Building Permit Number 081166
to Richard and Patricia Ashton
for Property at 38 Torrington Avenue, Peaks Island***



Dear Members of the Zoning Board of Appeals:

This office represents Alfred Aydelott and Adrienne Giske, who own a home at 36 Oak Avenue, Peaks Island; Donna Marston, who owns a home at 38 Oak Avenue, Peaks Island; and Claire Filleittaz and Monique Levesque, who own a home at 13 Greenwood Street, Peaks Island. On behalf of these Peaks Island property owners, I am filing this appeal of the decision of the Zoning Administrator to grant the above-referenced Building Permit (the "Building Permit").

The City of Portland's issuance of the Building Permit relies on the following erroneous interpretations of the City's Land Use Ordinance (the "Ordinance") and misinformation supplied by the Building Permit applicant:

1. The Building Permit claims that the area of the existing first floor is 1,438 square feet. In fact, the first floor area as shown on the Portland Assessor's Data Card (enclosed herewith) as 816 square feet.
2. The allowable expansion of the subject property is calculated under Sec. 14-436(b) of the Land Use Ordinance. In fact, the allowable expansion should be calculated under Sec. 14-436(a), which would have the effect of reducing the expansion area from 80% of the "first floor footprint" to 50% of the first floor footprint.

3. The Reviewer's Notes on the Building Permit claim that there is 394.55 square feet of existing living space on the "second floor," though the Assessor's records indicate that the dwelling is a one-story building with an unfinished attic. The amount of habitable area above the first floor is critical to determination of how much additional expansion space is permitted.
4. The subject property was expanded under building permit no. 06-0650 and is therefore ineligible for further expansion under the provisions of Sec. 14-436 ("Building expansions under this section may occur only once during the lifetime of an existing structure.").
5. The existing foundation does not meet current building code for the City of Portland and is structurally insufficient to support the structural loading associated with the proposed expansion.. At a minimum, a full structural engineering report should have been required prior to issuance of the Building Permit.

Further inquiry may yield additional zoning code and building code violation or misinterpretations. We reserve the right to supplement the supporting materials submitted with this Appeal .

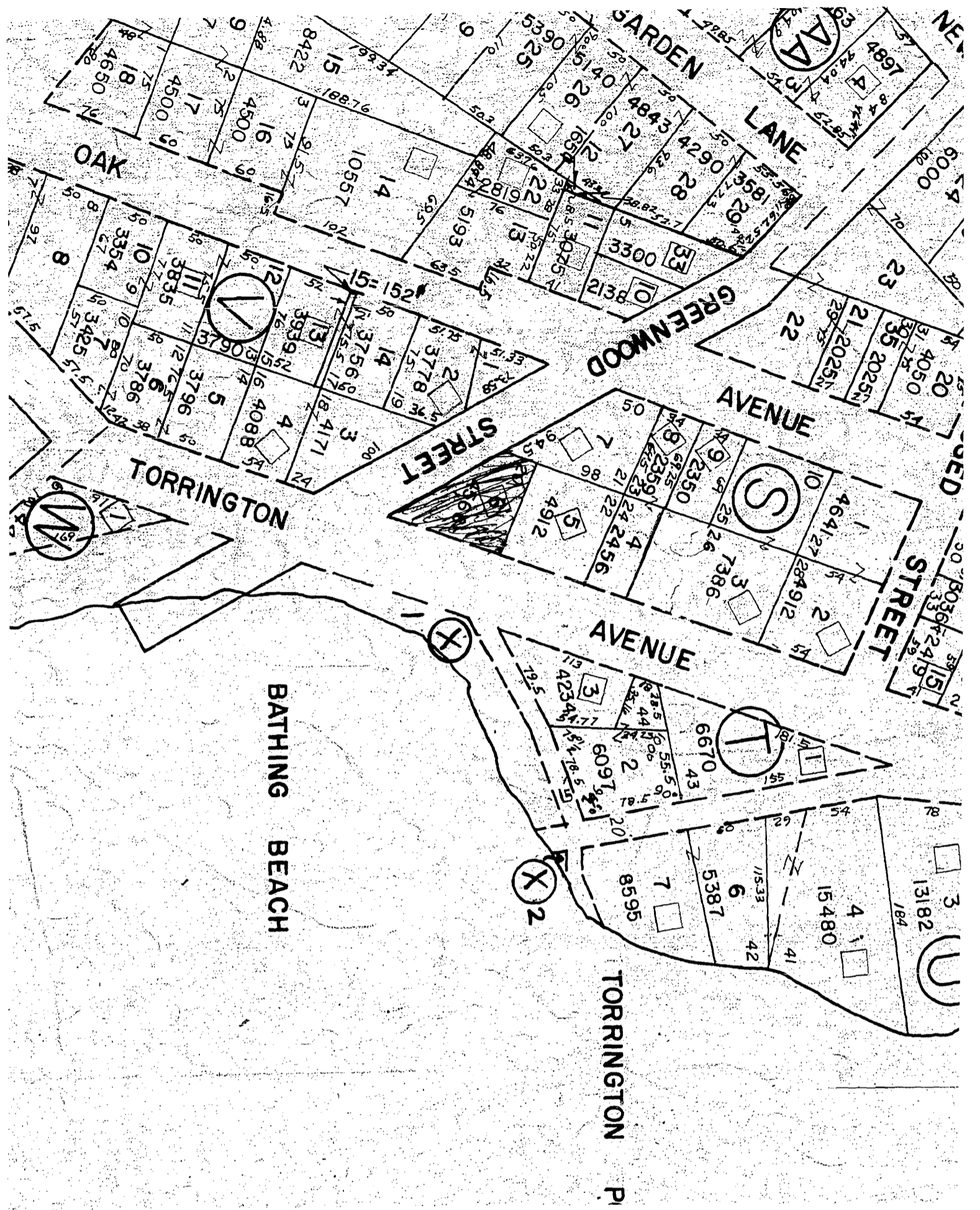
Thank you for your consideration. Please communicate with the applicants directly through this office.

Sincerely,


Jonathan L. Goldberg

Enclosures

cc: Alfred L. Aydelott
Adrienne A. Giske



PLAN REFERENCES:

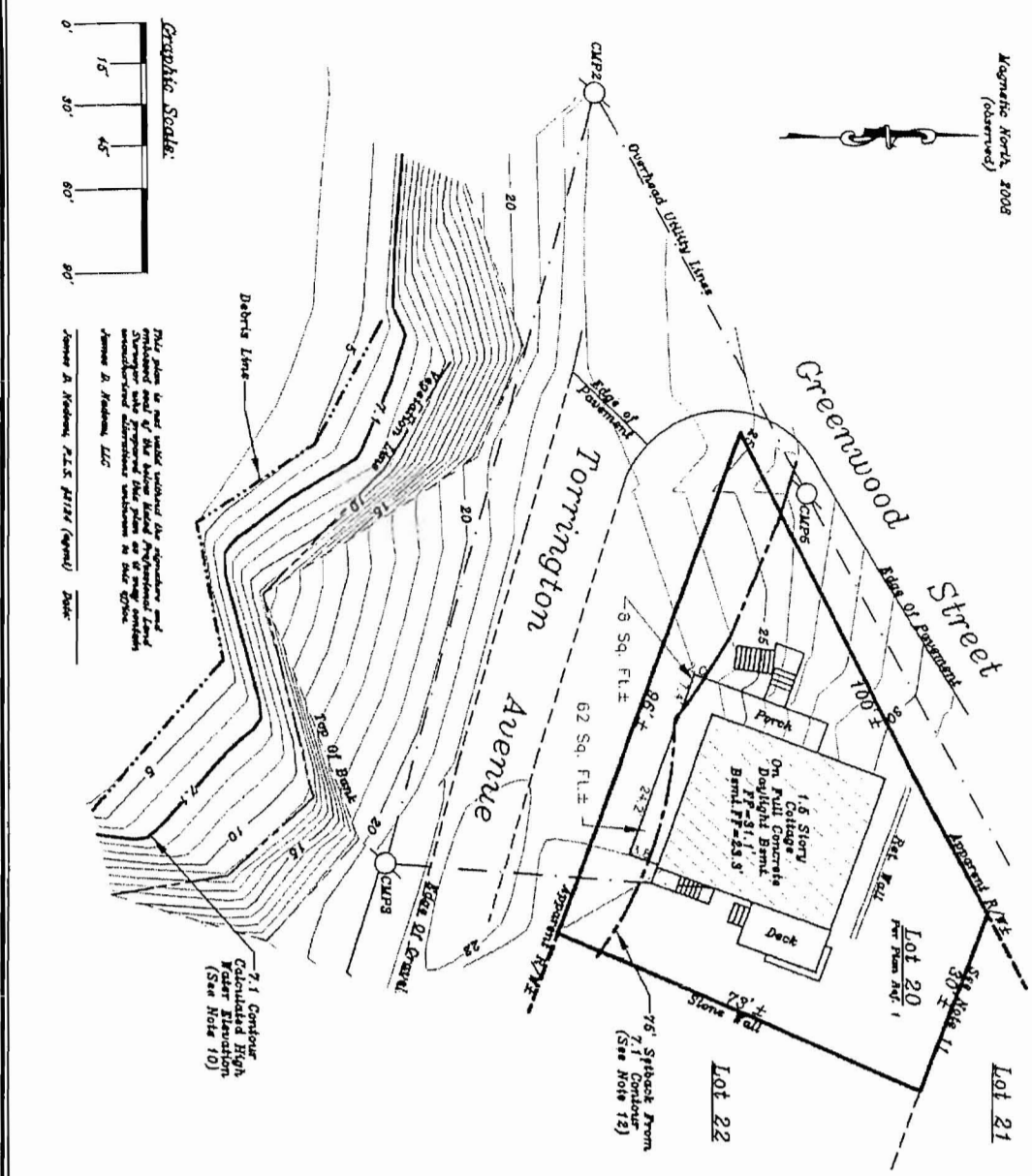
1. Plan of the Henry K. Grosbeck Estate, Commissioned by the State of Maine, dated October 1988 by J.A. Jones and recorded at the County Clerk's Office, Cumberland County, Maine, Book 8, page 57.
2. "Maine Revised - Proposition for Survey and Reformation" published by the Maine State Surveyor, dated 1988, and recorded at the County Clerk's Office, Cumberland County, Maine, Book 8, page 57.

LOCAL DEED REFERENCES:

- Deborah Korte and John Korte, Co-Executors
 Reformation of The Estate of Gordon Grosbeck
 Richard Abben and Patricia Abben
 dated January 24, 2008 and recorded at the County Clerk's Office, Cumberland County, Maine, Book 14, page 18.

GENERAL NOTES:

1. This plan is not intended to depict limits or extent of fee title ownership. The extent of title should be reviewed by a title company.
2. The owner reserves the right to be held harmless by all the party herein.
3. This survey does not purport to right any of the following:
 a. Any mineral rights.
 b. Any easements, rights, or other interests in the land.
 c. Any other interests in the land.
 d. Any other interests in the land.
4. This office reserves the right to be held harmless for unknown or undetectable encroachments which would affect the results of this survey.
5. Reference is made to "Section of Agreement" between James D. Maden, LLC and the other party herein, which shall be considered an integral part of this survey.
6. This office represents that a boundary survey for purposes of determining an accurate location of the specified boundary lines. No records or other documents have been reviewed to determine if any other party has been injured by the survey.
7. This office has not made any determination pertaining to unknown or undetectable encroachments.
8. The other party does not accept any liability for errors in the plan.
9. James D. Maden, LLC is a limited liability company organized under the laws of the State of Maine.
10. Encroachments are based on 2007 aerial photography. 1:2500 - 5K feet in plan of this case (2007-08-07).
11. The general right of way and boundary lines depicted on this plan are based on the 2007 aerial photography and measurements found in the plan. The plan is not intended to be a boundary survey for purposes of establishing a boundary line.
12. Encroachments are based on interpretation of aerial photos which may not be readily visible.



Sketch Plan Depicting The Location of High Water
Made For
Horsion Builders, Inc.
Torrington Avenue & Greenwood Street
PEARLS ISLAND, PORTLAND, MAINE

PREPARED BY:
James D. Maden, LLC
 Professional Land Surveyors
 918 BRIDGEWAY AVENUE
 PORTLAND, ME 04108
 TEL: (207) 878-2870
 FAX: (207) 878-2871

DATE: 07/17/08	SCALE: 1" = 60'
DATE: 07/17/08	SCALE: 1" = 60'
DATE: 07/17/08	SCALE: 1" = 60'
DATE: 07/17/08	SCALE: 1" = 60'

PREPARED BY: JDM:JMC
 DATE: 07/17/08
 SCALE: 1" = 60'

This plan is not valid without the signature and seal of the surveyor. The plan is not intended to be a boundary survey for purposes of establishing a boundary line. The plan is not intended to be a boundary survey for purposes of establishing a boundary line. The plan is not intended to be a boundary survey for purposes of establishing a boundary line.

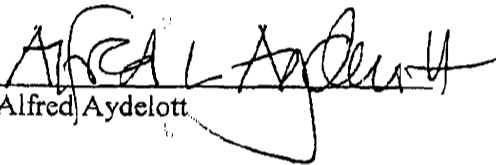
October 21, 2008


Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

Re: *Appeal of Decision of the Zoning Administrator
to Issue Building Permit Number 081166
to Richard and Patricia Ashton
for Property at 38 Torrington Avenue, Peaks Island*

Dear Board Members:

In all matters related to our appeal of Permit No. 08-1166, dated September 18, 2008, and issued to Richard Ashton and Patricia Ashton, we, the undersigned, designate Jonathan L. Goldberg, Esq. and MittelAsen, LLC as our representative. We authorize Mr. Goldberg to appear on our behalf in all matters that come before the Portland Zoning Board of Appeals pursuant to our appeal of said permit and to submit any materials on our behalf. We further authorize Mr. Goldberg to speak, negotiate, prepare and sign any and all documents on our behalf pursuant to this appeal.


Alfred Aydelott


Adrienne Giske

Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

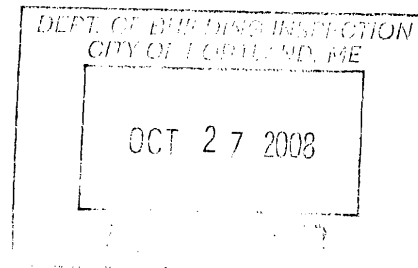
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10-23-08
Date

Claire Filleittaz
Claire Filleittaz



Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

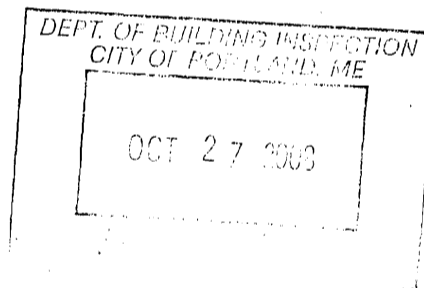
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10/23/08
Date

Monique Levesque
Monique Levesque



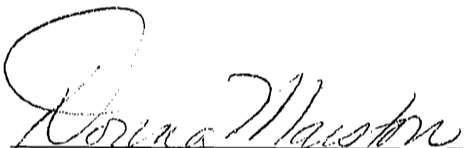
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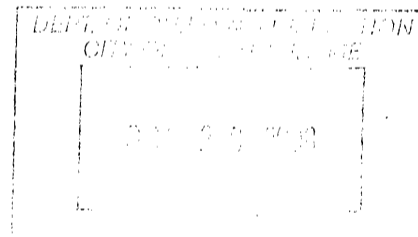
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10/28/08
Date


Donna Marston



05-01165

DEED OF SALE BY CO-PERSONAL REPRESENTATIVES

(Testate)

MAINE REAL ESTATE TAX PAID

We, JONATHAN MORRIS and JOHN THAXTER, duly appointed and acting Co-Personal Representatives of the Estate of Maxine Crawford, deceased testate as shown by the Probate Records of Cumberland County, Maine and not having given notice to each person succeeding to an interest in the real property described below at least ten (10) days prior to the sale, such notice not being required, by the power conferred by the Probate Code, and every other power, for consideration paid grants to RICHARD ASHTON and PATRICIA ASHTON, whose mailing address is 50 Silverhill Road, Milford, MA 01757, as joint tenants and not as tenants in common, the real property on Peak's Island, Portland, Cumberland County, State of Maine described as follows:

See Attached Legal Description in Exhibit A

Maxine Crawford died on August 30, 2004. Reference may be had to Cumberland County Probate Docket No. 2004-

WITNESS our hands and seals this

day of the month of December, 2005.

[Signature]
Witness

ESTATE OF MAXINE CRAWFORD

By: [Signature] P.R.
Jonathan Morris
Co-Personal Representative

Witness

By: [Signature] P.R.
John Thaxter
Co-Personal Representative

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

December 29, 2005

Personally appeared the above named JONATHAN MORRIS and JOHN THAXTER in their said capacities and acknowledged the foregoing instrument to be their free act and deed in their said capacities.

Before me,

[Signature]
Notary Public/Attorney at Law

DIANE L. ARSENAULT
Print or Type Name - State of Maine

My Commission Expires 3/19/2010

rc5
crawford estate-pr deed
12/13/05

001 2 2 2003

EXHIBIT A

A certain lot or parcel of land with the buildings thereon, situated on the southwesterly end of Peaks Island, in Portland, Maine, near the shore at the Bathing Beach, so-called, and separated from said shore and Bathing Beach only by a street fifty feet wide, said street now being known as Torrington Avenue; being lot numbered Twenty (20) as shown on a "Plan of the Henry M. Brackett Estate" made by J.B. Jones, Surveyor, October, 1900, and recorded in Cumberland County Registry of Deeds, Plan Book 9, Page 57, more particularly described as follows: Beginning at the intersection of the easterly sideline of a street forty feet wide, now known as Greenwood Street, running from Greenwood Garden to said Bathing Beach, and a street fifty feet wide, now known as Torrington Avenue, running along the shore at that point, said intersection being marked by an iron monument, and running southerly 70½ degrees easterly by said fifty foot street now known as Torrington Avenue, ninety-six feet to land of Nancy Libby; thence northerly 23 degrees easterly by said Libby's land, seventy-two and one-half feet to land of Harriet A. Fisher; thence northerly 70½ degrees westerly by said Fisher's land, thirty feet to said forty foot street now known as Greenwood Street; and from thence westerly by said Greenwood Street one hundred feet to the point of beginning, each corner of the lot being marked by an iron monument.

Meaning and intending to convey the same premises conveyed to Maxine Crawford by deed of Mary J. Hussey dated October 4, 1950 and recorded in the Cumberland County Registry of Deeds at Book 2020, Page 79. Maxine Crawford died August 30, 2004 and reference may be had to Cumberland County Registry of Probate Docket No. 2004-

Received
Recorded Register of Deeds
Jan 12, 2006 03:07:09P
Cumberland County
John B O'Brien



Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

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

TO: ZONING BOARD OF APPEALS CHAIR AND MEMBERS
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR
SUBJECT: 38 TORRINGTON AVE., P.I. - #084-S-006 – IR-2 ZONE
DATE: NOVEMBER 7, 2008

This memo is in response to Attorney Goldberg's letter to the Board dated October 16, 2008 and the issuance of a building permit #08-1166 to allow an upward expansion of the property located at 38 Torrington Avenue, Peaks Island.

1. It is important to point out that section 14-436 uses the terminology and concept of *the first floor footprint* and not to floor area as use by Attorney Goldberg. *Floor area* has a specific definition in the ordinance. Whereas *footprint* is not a defined term under the Ordinance. Therefore I consider *first floor footprint* to be different than *first floor area*. The first floor footprint that this office used was based upon the plans submitted by the applicant. This office does often check the Assessor's information to be sure that submitted information is similar. In this case there is 44 square foot difference in how this office determined the first floor footprint compared to the Assessor's first floor footprint. That difference can be attributed to stairs or slight dimensional differences. Typically the Assessor's office does not include stairs in their on-line drawings. The zoning review was correct in its base calculations for this project.
2. Section 14-436 allows building extensions under two defined criteria. The defined criteria hinges upon whether the property meets the zone's *land area per dwelling unit* or not. All the Island Residential Zones do not have a *land area per dwelling unit* dimensional requirement listed. However, all of the mainland residential zones do have specific *land area per dwelling unit* requirements listed within them. I have supplied copies of the R-1 thru R-6 zones and a copy of the IR-2 zone for comparisons. Because the IR-2 zone does not have a requirement of land area per dwelling unit, the zoning office allows island properties to use paragraph (b) of 14-436. It is interesting to point out that the zoning analysis shows the allowed increase to be 41% which could meet the paragraph (a) of 14-436. The zoning review was correct in how it determined which paragraph of section 14-436 is applicable.

3. In order to determine any existing floor area, the zoning office uses the Land Use Zoning Ordinance and its definitions and not the Assessor's methods for determining assessments. There is a definition of *story* in the Land Use Ordinance definitions within section 14-47. I have included a copy of the *story* definition for the Board. That definition does not include any wordage that requires such an area to be habitable. It is simply describing how to determine a story and what space would be considered within that area. The key to figuring out existing space is based upon where a portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above at a height of four feet is located. That is the same methodology that the zoning office used in the case of this building in determining existing space on any floor. The zoning review was correct in how it applied the definitions and regulations regarding existing area for this building.
4. The appellant has stated that this same building was expanded under a previous permit in 2006 and that such an expansion would have affected and blocked the expansion under the recently approved application. I have attached a copy of that permit for the Board. Permit #06-0650 as stated on the permit was to "repair and replace deteriorated decks and to remove partitions within the same footprint". This permit was not for an expansion. It in no way affects the expansion allowed under the current permit. Although I do not want the Board to spend a lot of time on this issue because it is really not relevant to the appeal, I also disagree with the appellant that only one expansion ever is permitted on such buildings. The Zoning office reads the expansion restriction to mean that the maximum amount allowed can only occur once during the lifetime of an existing structure. It is not read to mean that a proposed 5% expansion under this section of the ordinance prohibits a home owner from any more expansion. Our office tracks the amount of expansion and will limit expansions based upon the total amount allowed under the ordinance.
5. I will respond to the issue brought forward concerning the structural integrity of the foundation. It is noted that the foundation and/or first floor consists of concrete blocks as shown in the pictures and submitted plans. There is no evidence to suspect that such a base on which two floors of a stick-built structure is located will have an undue weight impact. No real evidence explains why the appellant considers the foundation to be "structurally insufficient". It would be unreasonable of the City to expect single family home owner to burden an expense of hiring an engineer to perform a full structural report prior for the issuance of a permit when it is unwarranted. I would defer to Code Enforcement for further comments.

Please note that at the hearing I would like to further respond to comments made by the appellant.

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 084 S006001
 Location 38 TORRINGTON AVE
 Land Use SEASONAL
 Owner Address ASHTON RICHARD & PATRICIA ASHTON JTS
 50 SILVERHILL RD
 MILFORD MA 01757
 Book/Page 23587/192
 Legal 84-S-6
 TORRINGTON AVE
 GREENWOOD ST
 PEAKS ISLAND 4568 SF

4568 = 913.6

Current Assessed Valuation

Land	Building	Total
\$200,700	\$74,100	\$274,800

Property Information

Year Built	Style	Story Height	Sq. Ft.	Total Acres	Bedrooms	Full Baths	Half Baths	Total Rooms	Attic	Basement
1900	Cottage	1	816	0.105	1	1		4	Unfin	Part

Outbuildings

Type	Quantity	Year Built	Size	Grade	Condition
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Sales Information

Date	Type	Price	Book/Page
01/12/2006	LAND + BLDING	\$340,000	23587-192

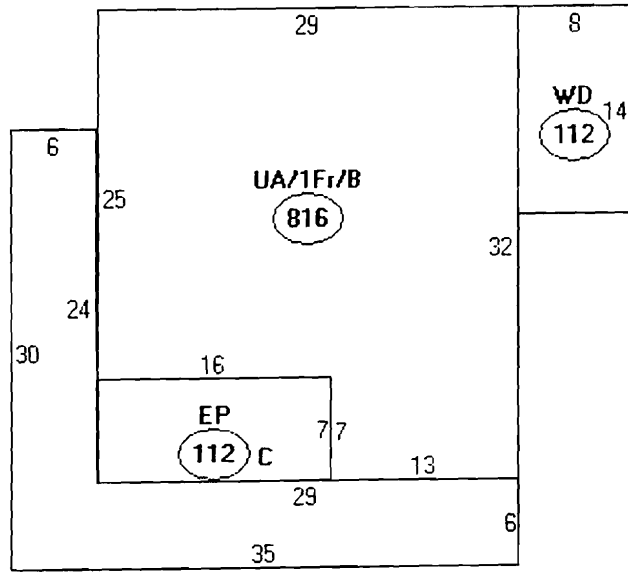
Picture and Sketch

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!



Descriptor/Area

A: UA/1Fr/B
816 sqft
B: WD
112 sqft
C: OFP
354 sqft
D: EP
112 sqft

816
112
354
112

1394

Sec. 14-464. Plans to be submitted.

A site plan showing the dimensions of the lot and of all buildings, yards and parking spaces, existing or proposed, shall accompany each application to the building authority for a building permit or certificate of occupancy. Site plans of all off-street loading and off-street parking, whether or not such parking is located on the same lot with the building for which it is required or which it is to serve, shall be provided.

(Code 1968, § 602.22.D)

Sec. 14-465. Zoning Determination Fee.

Upon request of any person and payment of a \$150.00 fee, the building authority shall issue a written decision, determination or interpretation regarding the zoning code. The fee shall not apply to any such decision, determination or interpretation made in regard to a single-family residence which is owned and occupied by the person making the request.

(Ord. No. 224-00, 5-15-00; Ord. No. 119-01/02, § 3, 12-3-01)

Sec. 14-466. Reserved.

Sec. 14-467. Reserved.

Sec. 14-468. Reserved.

Sec. 14-469. Reserved.

Sec. 14-470. Reserved.

DIVISION 28. JURISDICTION OF BOARD OF APPEALS*

*Cross reference(s)--Administration, Ch. 2; boards generally, § 2-31 et seq.; board of appeals, § 14-541 et seq.

Sec. 14-471. Jurisdiction and authority.

The board of appeals shall have the following jurisdiction and authority:

- (a) Subject to the provisions of section 14-472, to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority;
- (b) Subject to the provisions of section 14-473, to hear and