

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Peter Coyne
Philip Saucier-chair
Trish McAllister
Jill E. Hunter
Gordan Smith-secretary
William Geiz
Sara Moppin

December 4, 2009

Jonathan L. Goldberg Esq.
Mittel Asen, LLC
PO Box 427
Portland, ME 04101

RE: 8 Ryefield Street
CBL: 084 E005
ZONE: IR-2

Dear Mr. Goldberg:

As you know, at the December 3, 2009 meeting, the Zoning Board of Appeals voted 5-0 to grant continuances for the Interpretation Appeal and the Variance Appeal to the February 4, 2010 meeting.

Enclosed please find a bill for the processing fee, the legal ad and abutter's notification for the Interpretation Appeal and the bill for the legal ad and abutter's notification for the Variance Appeal. Also enclosed is a copy of the board's decision.

Appeals from decisions of the Board may be filed in Superior Court, pursuant to 30-A M.R.S.A. section 2691 (2) (G).

Should you have any questions please feel free to contact me at 207-874-8709.

Sincerely,



Ann Machado
Zoning Specialist
CC: file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: December 4, 2009

RE: Action taken by the Zoning Board of Appeals on December 3, 2009.

Members Present: Phil Saucier (chair), Jill Hunter, Peter Coyne (acting secretary), Trish McAllister, and William Getz.

Members Absent: Gordon Smith, and Sara Moppin

1. New Business:

A. Interpretation Appeal:

8 Ryefield Street, Peaks Island, Philip H. Morgan, owner, Tax Map 084, Block E, Lot 005, IR-2 Island Residential Zone: The appellant is seeking an interpretation of section 14-427 as it relates to the enclosure of an open porch with a roof that existed as of June 5, 1957 which does not meet the required setbacks. The appellant is also seeking an interpretation of the definition of a structure (section 14-47) as it applies to a "tent shed". Representing the appeal is Jonathan Goldberg, Esq. **The Board voted 5-0 to grant a continuance to the February 4, 2010 meeting.**

B. Variance Appeal:

8 Ryefield Street, Peaks Island, Philip H. Morgan, owner, Tax Map 084, Block E, Lot 005, IR-2 Island Residential Zone: The appellant is seeking a variance to keep the 8' x 20' deck and steps that were built without a permit. The appellant is requesting a variance for the right side setback from a required 20' to 11.5' [section 14-145.11(c)(3)] and for the rear setback from a required 25' to 6'8" [section 14-145.11(c)(2)]. The appellant is also requesting a variance for the maximum allowable lot coverage from 20% of the lot to 38.4% of the lot [section 14-145.11(d)]. Finally, the appellant is requesting a variance for the setback for a structure in a Shoreland Zone from the required 75' to 26'6" [section 14-449(a)(1)]. Representing the appeal is Jonathan Goldberg, Esq. **The Board voted 5-0 to grant a continuance to the February 4, 2010 meeting.**

C. Conditional Use Appeal:

231 York Street, Dana Fisher, LLC, owner, Tax Map 044, Block E, Lot 003, B-1 Zone:

The Zoning Board of Appeals granted a Conditional Use Appeal on November 13, 2008 to Dana Fishman, LLC to have a restaurant at 231 York Street [section 14-163(a)]. The Zoning Board of Appeals granted a six month extension for the Conditional Use Appeal on May 21, 2009. The appellant is requesting another six month extension of the Conditional Use Appeal. Representing the appeal is the applicant, Tod Dana. **The Board voted 5-0 to grant an extension for a year from 11/13/09 to 11/13/10.**

Enclosure:

Agenda of December 3, 2009

Original Zoning Board Decision

One tape

CC: Joseph Gray, City Manager

Penny St. Louis Littell, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

T.J. Martzial, Housing & Neighborhood Services Division

MITTEL ASEN, LLC

ATTORNEYS AT LAW
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PORTLAND, ME 04112-0427

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85 EXCHANGE STREET, 4th FLOOR
PORTLAND, MAINE 04101

PHONE 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

December 1, 2009

VIA EMAIL: amachado@portlandmaine.gov

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

RECEIVED

DEC 1 2009

Re: *Interpretation Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5; Permit # 08-1580 and*

Dept. of Building Inspections
City of Portland Maine

*Hardship Variance Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5*

Dear Members of the Zoning Board of Appeals:

I write to request that the Board continue the above-referenced matter from its December 3, 2009 agenda to its February 4, 2010 agenda.

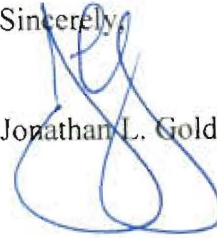
I learned over the Thanksgiving Holiday weekend that Mr. Morgan is unable to attend the meeting on December 3, 2009. Though we otherwise are prepared to make our arguments. I did not want to deny the Board its opportunity to question Mr. Morgan nor deny Mr. Morgan his opportunity to make a statement to the Board.

Mr. Morgan is scheduled for a major surgical procedure in late December. Hence, in order to assure that he has convalesced sufficiently to attend the meeting, he asks that the Board re-schedule these appeals for its first meeting in February.

Thank you for your consideration.

Sincerely,

Jonathan L. Goldberg

A handwritten signature in blue ink, appearing to read "Jonathan L. Goldberg", written over the printed name.

From: "Jonathan Goldberg" <JGoldberg@mittelasen.com>
To: "Ann Machado" <AMACHADO@portlandmaine.gov>
Date: 12/1/2009 2:11:18 PM
Subject: Morgan Appeal to ZBA

Please see attached letter to the Zoning Board of Appeals. I am planning to attend the Thursday meeting (December 3) to make the request in person

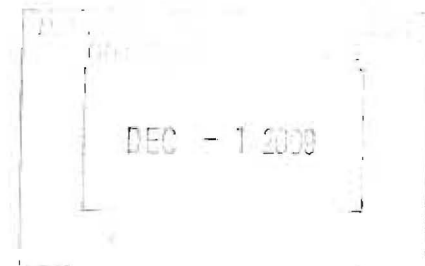
Thank you,
Jon

-----Original Message-----

From: Toshiba Copier [mailto:eStudio3510c@mittelasen.com]
Sent: Tuesday, December 01, 2009 2:02 PM
To: Jonathan Goldberg
Subject: Scanned from MFP-05240015 12/01/2009 14:01

Scanned from MFP-05240015
Date: 12/01/2009 14:01
Pages:2
Resolution:300x300 DPI

CC: <pmorgan@attglobal.net>





PORTLAND MAINE

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

*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: ANN MACHADO, ZONING SPECIALIST *AM*
SUBJECT: 8 RYEFIELD STREET, PEAKS ISLAND, 084-E-005 - IR-2
DATE: NOVEMBER 24, 2009

This memo is to address some of the points that Mr. Goldberg brought up in his Interpretation Appeal and the Variance Appeal for 8 Ryefield Street, Peaks Island.

One issue that the Interpretation Appeal addresses is the interpretation of section 14-427. Section 14-427 states; "Any open porch existing with a roof over the same on June 5, 1957 and encroaching upon any yard required by this article may be enclosed if the major portion of the enclosure is of glass". (attachments #1 & #2) Mr. Morgan applied for a permit on 12/23/08 to "enclose 6' x 28' porch except for 2' x 9' area by steps - all in original footprint". (attachment #3) Since the porch is located right on the side property line well within the required 20' side setback, the majority of the enclosure must be of glass. To meet the criteria, just over 50% of the walls of the porch must be glass. The plans submitted with the permit did not meet this standard. Revised plans were submitted which still did not show more than 50% of the walls as glass. On the last plans submitted on 2/20/09 only 19.2% of the total wall area was glass. (attachment #4) Section 14-427 is quite straight forward and specific about what is allowed. It does not list any exceptions or special circumstances where it does not apply. The application to enclose the porch did not meet the criteria.

The second issue that Mr. Goldberg addresses in the interpretation appeal is the definition of a structure (section 14-47) as it pertains to a "tent shed". Mr. Goldberg argues that the "tent shed" is not a structure. A structure is defined as "Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground". (attachment #5) The tent shed has a framework that supports the fabric that covers it. This framework is made up of more than one member. The tent shed is fixed to the ground by four stakes, one at each corner. The "tent shed" is a structure according to the definition and must be permitted as such.

With the Variance Appeal for the deck, there are also a few issues. In my letter dated March 24, 2009, I point out that the deck did not exist on the pre-1957 assessor's card. It

also was not shown on the 1981 assessor's card. (attachment #6) It was built sometime after 1981, and there is no record of a permit being applied for.

In his cover letter, Mr. Goldberg states that it would have been "virtually impossible for the Morgan family or its title attorney to have ascertained that the deck and stairs were constructed without a permit". Our records are open to the public, and the research could have been done to see if all parts of the existing structure were permitted when the Morgan family purchased the property. It is the responsibility of the buyers to do their due diligence.

Finally, Mr. Goldberg states that the rear door to the dwelling which goes out on to the deck is the only secondary access and egress to the building. However, beside the front door, there is also a side door that opens on to the side porch, so a secondary means of egress already exists. This particular door provides a third access and egress.

Attachment # 1

City of Portland
Code of Ordinances
Sec. 14-422

Land Use
Chapter 14
Rev. 9-17-09

Sec. 14-423. Joint occupancy.

When two (2) or more uses occupy the same building or premises, the off-street parking and loading requirements and the area per dwelling unit requirements of both uses shall be met in full.

(Code 1968, § 602.19.B)

Sec. 14-424. Required open space.

No part of a yard or other open space required about any building under this article shall be included as a part of a yard or other open space required for another building.

(Code 1968, § 602.19.C)

Sec. 14-425. Projections in required yard areas.

Any yard may be occupied by a one-story entrance porch not enclosed, with or without a roof, if the area of the porch does not exceed fifty (50) square feet nor the projection from the building exceed six (6) feet. A basement bulkhead of similar size, but not more than twenty four (24) inches in height, is also permitted. A cornice eave, sill, canopy, chimney, or other similar architectural feature, but not including a bay window, may project into any required yard a distance of not more than two (2) feet.

(Code 1968, § 602.19.D; Ord. No. 78-03/04, 10-20-03)

Sec. 14-426. Fences.

In residence zones no wall or fence along a street line or within twenty-five (25) feet of a street line shall be more than four (4) feet in height unless said fence is located in the side or rear yard and is reviewed by the public works authority and found not to be a traffic or public safety hazard, subject to the provisions of section 14-434.

(Code 1968, § 602.19.E; Ord. No. 247-97, 4-9-97)

Sec. 14-427. Enclosure of porches.

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any yard required by this article may be enclosed if the major portion of the enclosure is of glass.

(Code 1968, § 602.19.F)

Sec. 14-428. Corner lots.

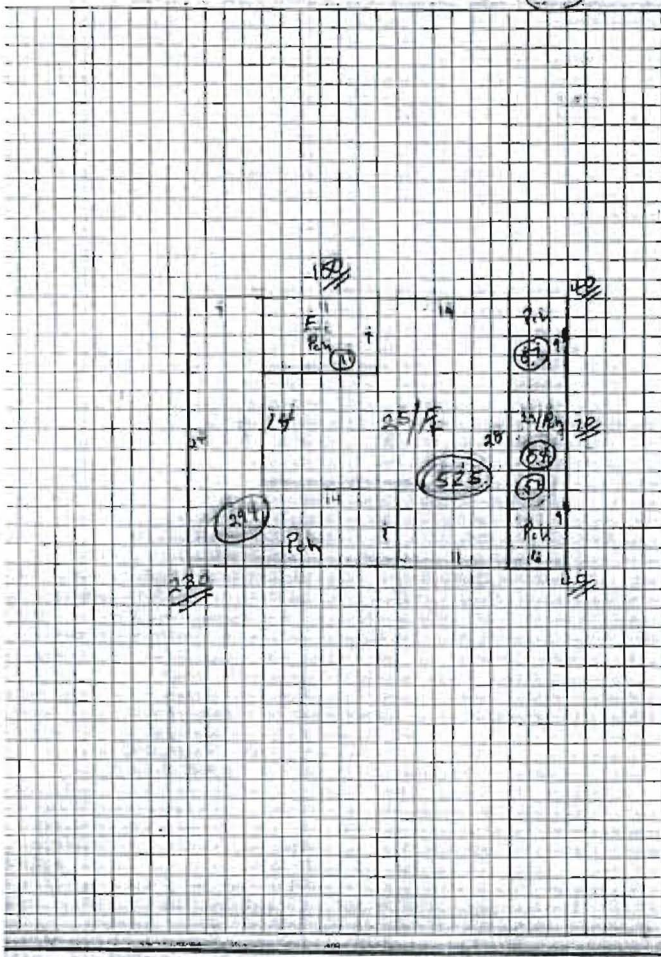
YEAR 19

YEAR 19

95
95

32x28 =
6x28 =

EST.



CONSTRUCTION

FOUNDATION		FLOOR CONST.		PLUMBING	
CONCRETE		WOOD JOIST	<input checked="" type="checkbox"/>	BATHROOM	<input checked="" type="checkbox"/>
CONCRETE BLOCK		STEEL JOIST		TOILET ROOM	
BRICK OR STONE		MILL TYPE		WATER CLOSET	
PIERS	<input checked="" type="checkbox"/>	REIN. CONCRETE		LAVATORY	
CELLAR AREA FULL	<input checked="" type="checkbox"/>	FLOOR FINISH		KITCHEN SINK	<input checked="" type="checkbox"/>
1/4 1/2 3/4			B 1 2 3	STD. WAT. HEAT	
EXTERIOR WALLS		CEMENT		AUTO. WAT. HEAT	
CLAPBOARDS	<input checked="" type="checkbox"/>	EARTH	<input checked="" type="checkbox"/>	ELECT. WAT. SYST.	
WIDE SIDING		PINE	<input checked="" type="checkbox"/>	LAUNDRY TUBS	
DROP SIDING		HARDWOOD	<input checked="" type="checkbox"/>	NO PLUMBING	
NO SHEATHING		TERRAZZO		TILING	
WOOD SHINGLES		TILE		BATH FL. & WCOT.	
ASBES. SHINGLES				TOILET FL. & WCOT.	
STUCCO ON FRAME		ATTIC FLR. & STAIRS		LIGHTING	
STUCCO ON TILE		INTERIOR FINISH		ELECTRIC	<input checked="" type="checkbox"/>
BRICK VENEER			B 1 2 3	NO LIGHTING	
BRICK ON TILE		PINE	<input checked="" type="checkbox"/>	NO. OF ROOMS	
SOLID BRICK		HARDWOOD	<input checked="" type="checkbox"/>	BSMT.	2ND
STONE VENEER		PLASTER		1ST.	3RD
CONC. OR CIND. BL.		UNFINISHED	<input checked="" type="checkbox"/>	OCCUPANCY	
		METAL CLG.	<input checked="" type="checkbox"/>	SINGLE FAMILY	<input checked="" type="checkbox"/>
TERRA COTTA				TWO FAMILY	
VITROLITE		RECREAT. ROOM		APARTMENT	
PLATE GLASS		FINISHED ATTIC		STORE	
INSULATION		FIREPLACE		THEATRE	
WEATHERSTRIP		HEATING		HOTEL	
ROOFING		PIPELESS FURNACE		OFFICES	
ASPH. SHINGLES		HOT AIR FURNACE		WAREHOUSE	
WOOD SHINGLES		FORCED AIR FURN.		COMM. GARAGE	
ASBES. SHINGLES		STEAM		GAS STATION	
SLATE TILE		HOT WAT. OR VAPOR		ECONOMIC CLASS	
METAL		NO HEATING	<input checked="" type="checkbox"/>	OVER BUILT	
COMPOSITION		GAS BURNER		UNDER BUILT	
ROLL ROOFING		OIL BURNER		DT: 8-10-58	AR: 30
INSULATION		STOKER		LD: 12	PD: 30
				MS: 12	CK: 32

1951 assessor's card

COMPUTATIONS

UNIT	1951		
525 S. F.	1950		
S. F.			
ADDITIONS	+530		
F.I.D.T.	-170		
BASEMENT	+250		
WALLS			
ROOF			
SINGLE FAMILY	+30		
TWO FAMILY	-80		
APARTMENT			
STORE			
THEATRE			
HOTEL			
OFFICES			
WAREHOUSE			
COMM. GARAGE			
GAS STATION			
FINISH		-580	
FIREPLACE			
HEATING			
PLUMBING		+210	
TILING			
TOTAL	2170		
FACT. HO	200		
REP. VAL.	2370		

A Habitat #2

SUMMARY OF BUILDINGS

OCCY	TYPE	GR.	AGE	REMOD.	COND.	REP. VAL.	P. D.	PHY. VAL.	F. D.	SOUND VAL.	TAX VAL.
Cottage	A 2 1/2 Fr	DC	?		P	2370	55%	1070	A	1070	650
	B								B		
	C								C		
	D								D		
	E								E		
	F								F		
	G								G		
YEAR	1951								1951 TOTAL BLDGS:		1070 650
TAX VAL.	650								19		19
OLD VAL.									19		19
CHANGE									19		19

Attachment # 3

City of Portland, Maine - Building or Use Permit

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

Permit No: 08-1580	Date Applied For: 12/23/2008	CBL: 084 E005001
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Location of Construction: 8 RYEFIELD ST, Peaks Island	Owner Name: MORGAN PHILIP H	Owner Address: 30 BARKLEY AVE	Phone: 207-786-3102
Business Name:	Contractor Name: Terry Edwards	Contractor Address: 36 Whispering Pines Drive SoPortland	Phone: (207) 899-5737
Asset/Buyer's Name	Phone:	Permit Type: Additions - Dwellings	

Proposed Use: Single Family Home - Rebuild existing 6' x 28' porch w/ new foundation - all in original footprint.	Proposed Project Description: Rebuild existing 6' x 28' porch w/ new foundation - all in original footprint
--	--

Dept: Zoning Status: Approved with Conditions Reviewer: Ann Machado Approval Date: 03/19/2009

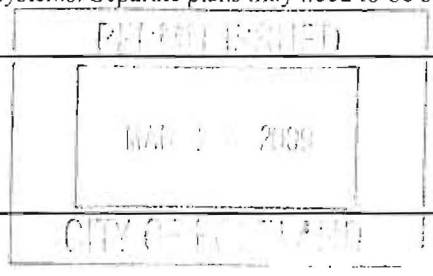
Note: Original application description was to "enclose 6' x 28' porch except for 2' x 9' area by steps - all in original footprint". Received revised description 3/19/09. Ok to Issue:

-) The owner has thirty days to remove the 20' x 8' deck and steps on the rear of the house and the 12' x 20 tent shed on the property because they were not permitted and therefore are illegal.
-) This permit is being issued with the condition that all the work is taking place within the existing footprint, and that the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than three additional feet beyond the height of the structure prior to the installation of the new foundation.
-) This property shall remain a single family dwelling. Any change of use shall require a separate permit application for review and approval.
-) 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: 03/23/2009

Note: called Terry and requested more building info before issuing permit. Terry called back and have received needed info, ok to issue. Ok to Issue:

-) Permit approved based on the plans submitted and reviewed w/owner/contractor, with additional information as agreed on and as noted on plans.
-) Separate permits are required for any electrical, plumbing, HVAC or exhaust systems. Separate plans may need to be submitted for approval as a part of this process.



Comments:

2/31/2008-lmd: Intake taken by Gayle, see her with any questions

2/31/2008-amachado: Spoke to the owner Philip Morgan. Told him about that it was in shoreland. He asked me to call the contractor Terry Edwards. I also told Philip Morgan that the deck was put on without a permit. He said that it was there when he bought the house in 1995. I told him that it would have to come off if there was no permit. He said that he enlarged the platform at the top of the stairs at the front entry. He said that it was within the footprint of the stairs. I left a voicemail for Terry Edwards..

2/2009-amachado: Met with Terry Edwards at the counter. Went over the need for the survey with 75' setback from high tide indicated. Also talked about the fact that can't find permit for the existing deck.

29/2009-amachado. Terry brought in a survey on 1/26/09. The building falls within the 75' setback from the highest spring tide. Left Terry a vcm. Need information on the existing floor area and volume and the proposed floor area and volume. Also the structure falls within the AO floodzone so a Flood Hazard Development Permit Application needs to be filled out.

Location of Construction: 8 RYEFIELD ST, Peaks Island	Owner Name: MORGAN PHILIP H	Owner Address: 30 BARKLEY AVE	Phone: 207-786-3102
Business Name:	Contractor Name: Terry Edwards	Contractor Address: 36 Whispering Pines Drive SoPortland	Phone: (207) 899-5737
Lessee/Buyer's Name	Phone:	Permit Type: Additions - Dwellings	

1/29/2009-amachado: Met with Terry Edwards. He took the survey back because it was the only one he had. He will get a scalable stamped survey & 11" x 17" copy from surveyor. We went over the floor area and volume requirements for shoreland. I gave him the Flood Hazard Development Permit Application. He may add to the application by putting a deck over the first floor section of the existing building.

2/23/2009-amachado. Met with Terry on 2/20/09. He submitted Flood Hazard Permit application, stamped boundary survey & numbers for the existing floor area and volume. I left him a voicemail. Have questions about the numbers for the existing floor area and volume.

2/25/2009-amachado: Met with Terry Edwards. Went over the new numbers for the volume and floor area within shoreland. Looked at newest proposal for the windows on the enclosed porch. The enclosed porch needs to be at least 50% windows. The proposed plans did not show this. Terry was going to talk to the owner and get back to me.

3/11/2009-amachado: Terry came in today and picked up a "hardship" variance application. The owner does not want to have the enclosed porch be 50% glass.

3/16/2009-amachado: Sent letter. Application denied. 30 days to appeal decision.

3/16/2009-amachado: Returned phone call to Terry Edwards. Philip Morgan has decided not to pursue variance. Will not enclose porch at this time. Wants to just rebuild existing porch but will put foundation under it.

3/19/2009-amachado: Terry Edwards came in and revised the permit description. Now he is just rebuilding the original porch with a new foundation. The cost of the work will now be \$6,000 instead of the original \$12,000 that he paid for (\$140). Lisa asked him to bring in the original receipt with a request in writing to have a refund of the difference in the cost of work.



Original - see revised 3/19/09
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: <u>78 1/2 10th Street Portland ME 04108</u>		
Total Square Footage of Proposed Structure/Area <u>250 sq ft</u>	Square Footage of Lot	Number of Stories <u>1</u>
Tax Assessor's Chart, Block & Lot Chart# Block# Lot# <u>84 E 5</u>	Applicant *must be owner, Lessee or Buyer* Name <u>Philip H. Morgan</u> Address <u>30 BARKLEY AV</u> City, State & Zip <u>AUBURN, ME 04210</u>	Telephone: <u>207-786-3102</u>
Lessee/DBA (If Applicable)	Owner (if different from Applicant) Name Address City, State & Zip	Cost Of Work: \$ <u>12,000.00</u> C of O Fee: \$ <u>140.00</u> Total Fee: \$ <u>12,140.00</u>
Current legal use (i.e. single family) <u>Single Family</u> Number of Residential Units _____ If vacant, what was the previous use? _____ Proposed Specific use: <u>CO-OP</u> DEC 23 2008 Is property part of a subdivision? <u>No</u> If yes, please name _____ Project description: <u>In close porch w-Deck 2x8 w stairs 6' x 28' In original foot print.</u>		
Contractor's name: <u>T Edwards Terry</u>	+x Call	
Address: <u>30 Whistling Pine St</u>		
City, State & Zip: <u>30 Portland ME 04108</u>	Telephone: <u>299 5707</u>	
Who should we contact when the permit is ready: <u>T Edwards</u>	Telephone: _____	
Mailing address: _____		

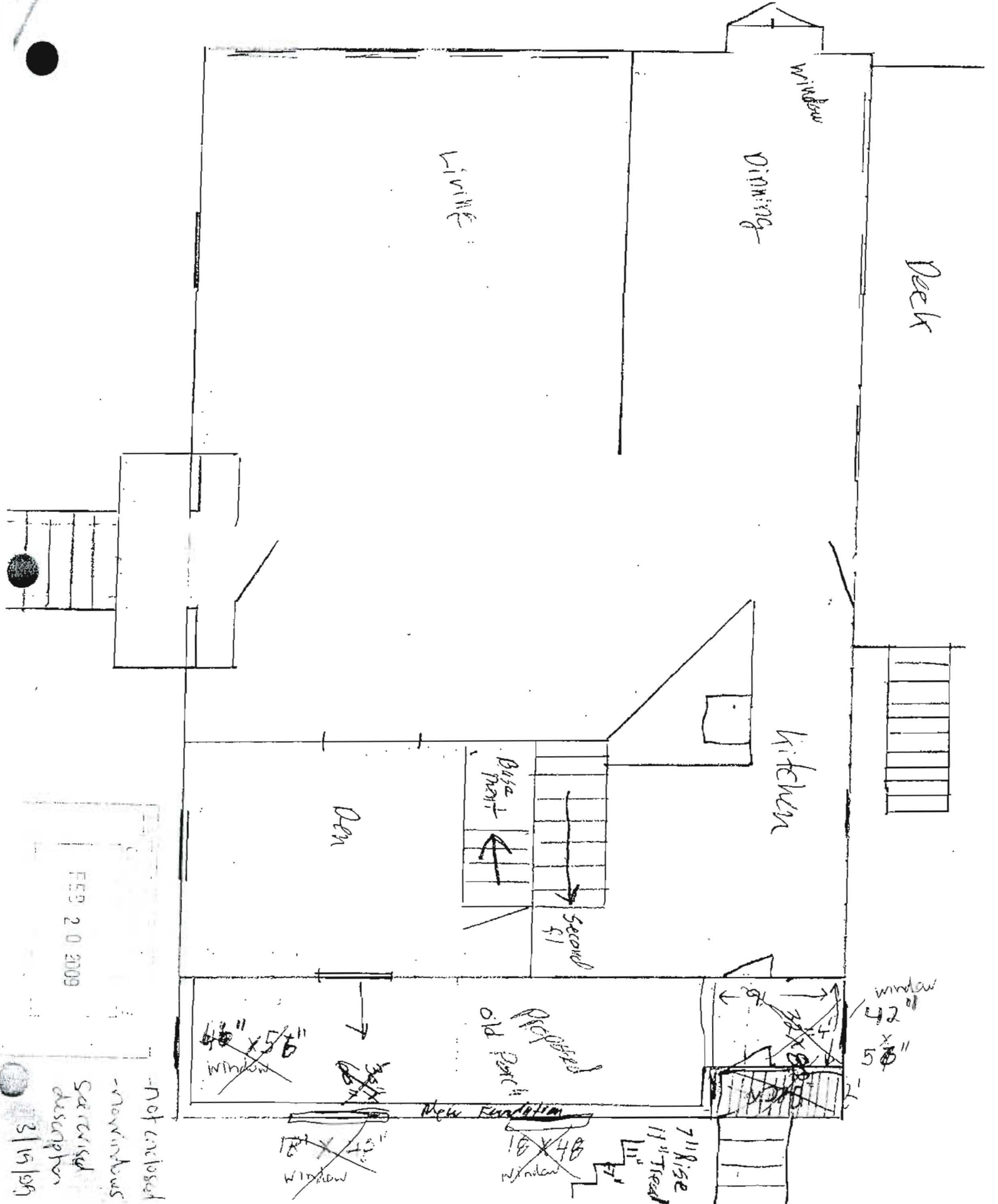
Please submit all of the information outlined on the applicable Checklist. Failure to do so will result in the automatic denial of your permit.

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.

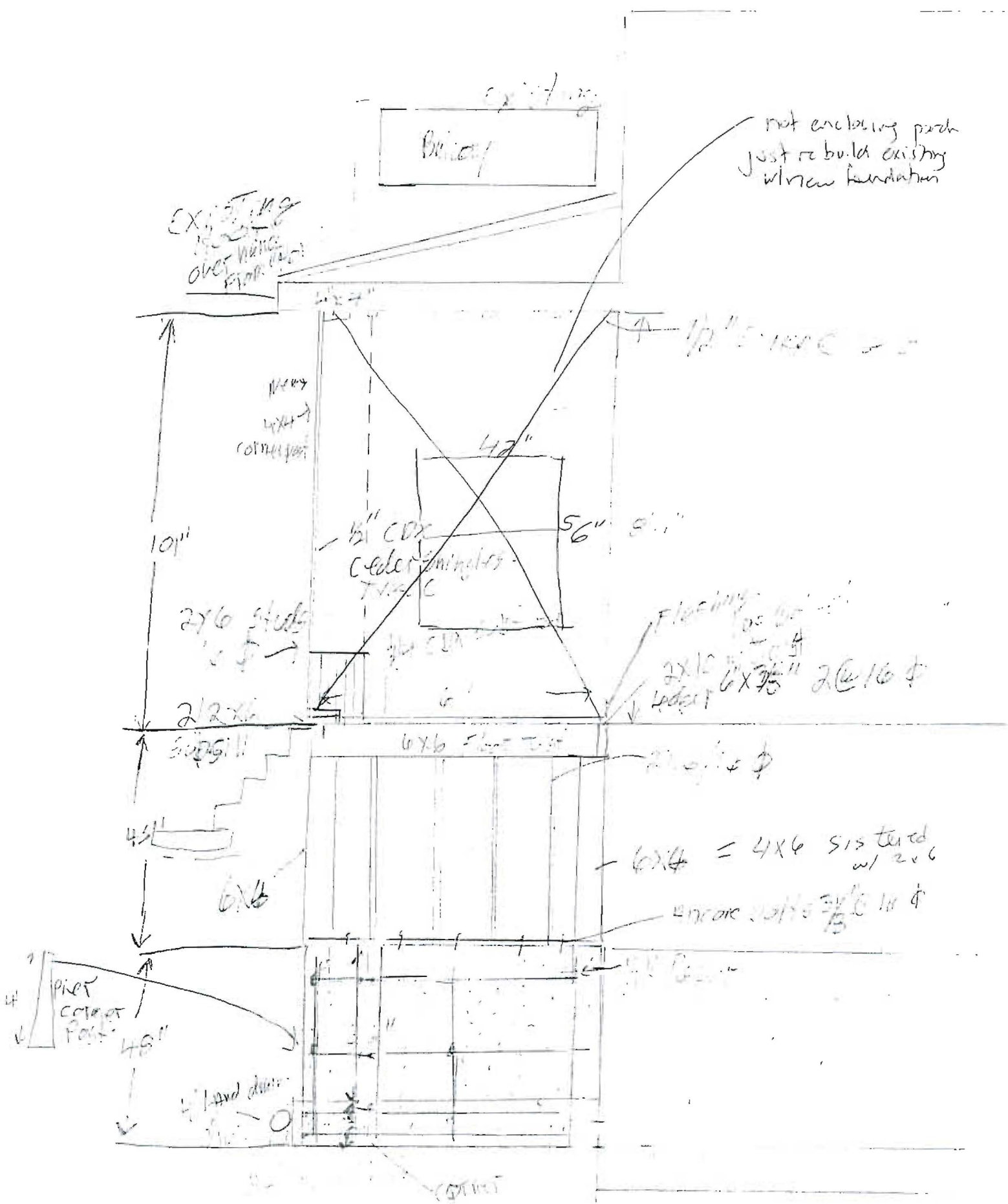
Signature: Philip H. Morgan Date: Dec. 19, 2008

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



FEED 2.0 2009

Not enclosed
 - no windows
 Sarcus
 description
 3/15/09



existing
Bench

EXISTING
OVER HANG
FROM WALL

not enclosing porch
just rebuild existing
w/ new foundation

new
4x4
corner post

1/2" E-ROCK

47"

56" sill

1/2" CDX
Cedar sheathing
T-111

101"

2x6 studs

Flooring
2x12 joist
6x7 1/2" 2 @ 16"

2x2x6

6x6 floor joist

5x8 sill

2 @ 16"

48"

6x6

6x4 = 4x6 sistered
w/ 2x6

encore 2x6 @ 16"

PICT
corner
Post
48"

4" hand down

CONCRETE

Attachment # 3

City of Portland, Maine - Building or Use Permit

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

Permit No: 08-1580	Date Applied For: 12/23/2008	CBL: 084 E005001
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Location of Construction: RYEFIELD ST, Peaks Island	Owner Name: MORGAN PHILIP H	Owner Address: 30 BARKLEY AVE	Phone: 207-786-3102
Business Name:	Contractor Name: Terry Edwards	Contractor Address: 36 Whispering Pines Drive SoPortland	Phone: (207) 899-5737
Assoc/Buyer's Name	Phone:	Permit Type: Additions - Dwellings	

Proposed Use: Single Family Home - Rebuild existing 6' x 28' porch w/ new foundation - all in original footprint.	Proposed Project Description: Rebuild existing 6' x 28' porch w/ new foundation - all in original footprint
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Dept: Zoning Status: Approved with Conditions Reviewer: Ann Machado Approval Date: 03/19/2009

Note: Original application description was to "enclose 6' x 28' porch except for 2' x 9' area by steps - all in original footprint". Received revised description 3/19/09. Ok to Issue:

The owner has thirty days to remove the 20' x 8' deck and steps on the rear of the house and the 12' x 20 tent shed on the property because they were not permitted and therefore are illegal.

This permit is being issued with the condition that all the work is taking place within the existing footprint, and that the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than three additional feet beyond the height of the structure prior to the installation of the new foundation.

This property shall remain a single family dwelling. Any change of use shall require a separate permit application for review and approval.

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: 03/23/2009

Note: called Terry and requested more building info before issuing permit. Terry called back and have received needed info, ok to issue. Ok to Issue:

Permit approved based on the plans submitted and reviewed w/owner/contractor, with additional information as agreed on and as noted on plans.

Separate permits are required for any electrical, plumbing, HVAC or exhaust systems. Separate plans may need to be submitted for approval as a part of this process.



Comments:

31/2008-lmd: Intake taken by Gayle, see her with any questions

31/2008-amachado: Spoke to the owner Philip Morgan. Told him about that it was in shoreland. He asked me to call the contractor Terry Edwards. I also told Philip Morgan that the deck was put on without a permit. He said that it was there when he bought the house in 1995. I told him that it would have to come off if there was no permit. He said that he enlarged the platform at the top of the stairs at the front entry. He said that it was within the footprint of the stairs. I left a voicemail for Terry Edwards.

2/2009-amachado: Met with Terry Edwards at the counter. Went over the need for the survey with 75' setback from high tide line. Also talked about the fact that can't find permit for the existing deck.

3/2009-amachado: Terry brought in a survey on 1/26/09. The building falls within the 75' setback from the highest spring tide. Left Terry a vcm - Need information on the existing floor area and volume and the proposed floor area and volume. Also the structure falls within the AO floodzone so a Flood Hazard Development Permit Application needs to be filled out.

Location of Construction:	Owner Name:	Owner Address:	Phone:
3 RYEFIELD ST, Peaks Island	MORGAN PHILIP H	30 BARKLEY AVE	207-786-3102
Business Name:	Contractor Name:	Contractor Address:	Phone:
	Terry Edwards	36 Whispering Pines Drive SoPortland	(207) 899-5737
Officer/Buyer's Name:	Phone:	Permit Type:	
		Additions - Dwellings	

1/29/2009-amachado: Met with Terry Edwards. He took the survey back because it was the only one he had. He will get a scalable stamped survey & 11" x 17" copy from surveyor. We went over the floor area and volume requirements for shoreland. I gave him the Flood Hazard Development Permit Application. He may add to the application by putting a deck over the first floor section of the existing building.

1/23/2009-amachado: Met with Terry on 2/20/09. He submitted Flood Hazard Permit application, stamped boundary survey & numbers for the existing floor area and volume. I left him a voicemail. Have questions about the numbers for the existing floor area and volume.

1/25/2009-amachado: Met with Terry Edwards. Went over the new numbers for the volume and floor area within shoreland. Looked at newest proposal for the windows on the enclosed porch. The enclosed porch needs to be at least 50% windows. The proposed plans did not show this. Terry was going to talk to the owner and get back to me.

1/11/2009-amachado: Terry came in today and picked up a "hardship" variance application. The owner does not want to have the enclosed porch be 50% glass.

1/6/2009-amachado: Sent letter. Application denied. 30 days to appeal decision.

1/6/2009-amachado: Returned phone call to Terry Edwards. Philip Morgan has decided not to pursue variance. Will not enclose porch at this time. Wants to just rebuild existing porch but will put foundation under it.

1/9/2009-amachado: Terry Edwards came in and revised the permit description. Now he is just rebuilding the original porch with a new foundation. The cost of the work will now be \$6,000 instead of the original \$12,000 that he paid for (\$140). Lisa asked him to bring in the original receipt with a request in writing to have a refund of the difference in the cost of work.

Original - see revised 3/19/09

General Building Permit Application



If you or the property owner owe 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: <u>30 BARKLEY AV AUBURN ME</u>		
Total Square Footage of Proposed Structure/Area <u>250 sq ft</u>	Square Footage of Lot	Number of Stories <u>1</u>
Tax Assessor's Chart, Block & Lot Chart# <u>E4</u> Block# <u>E</u> Lot# <u>5</u>	Applicant 'must be owner, Lessee or Buyer' Name <u>Philip H. Morgan</u> Address <u>30 BARKLEY AV</u> City, State & Zip <u>AUBURN, ME 04210</u>	Telephone: <u>207-786-3102</u>
Lessee/DBA (If Applicable)	Owner (if different from Applicant) Name Address City, State & Zip	Cost Of Work: \$ <u>12,000.00</u> C of O Fee: \$ <u>140.00</u> Total Fee: \$ <u>12,140.00</u>
Current legal use (i.e. single family) <u>single family</u> Number of Residential Units	If vacant, what was the previous use?	
Proposed Specific use: <u>CONVERT</u>	<u>DEC 23 2008</u>	
Is property part of a subdivision? <u>no</u> If yes, please name	Project description: <u>In close back w-deck 2x8 w stairs 6' x 28' In original foot print</u>	
Contractor's name: <u>T Edwards Terry</u>	Address: <u>30 Whispering Pines Dr</u>	
City, State & Zip: <u>So. Portland ME</u>	Telephone: <u>588 5000</u>	<u>+x Call</u>
Who should we contact when the permit is ready: <u>T Edwards</u>	Telephone: <u>"</u>	
Mailing address: <u>"</u>	<u>"</u>	

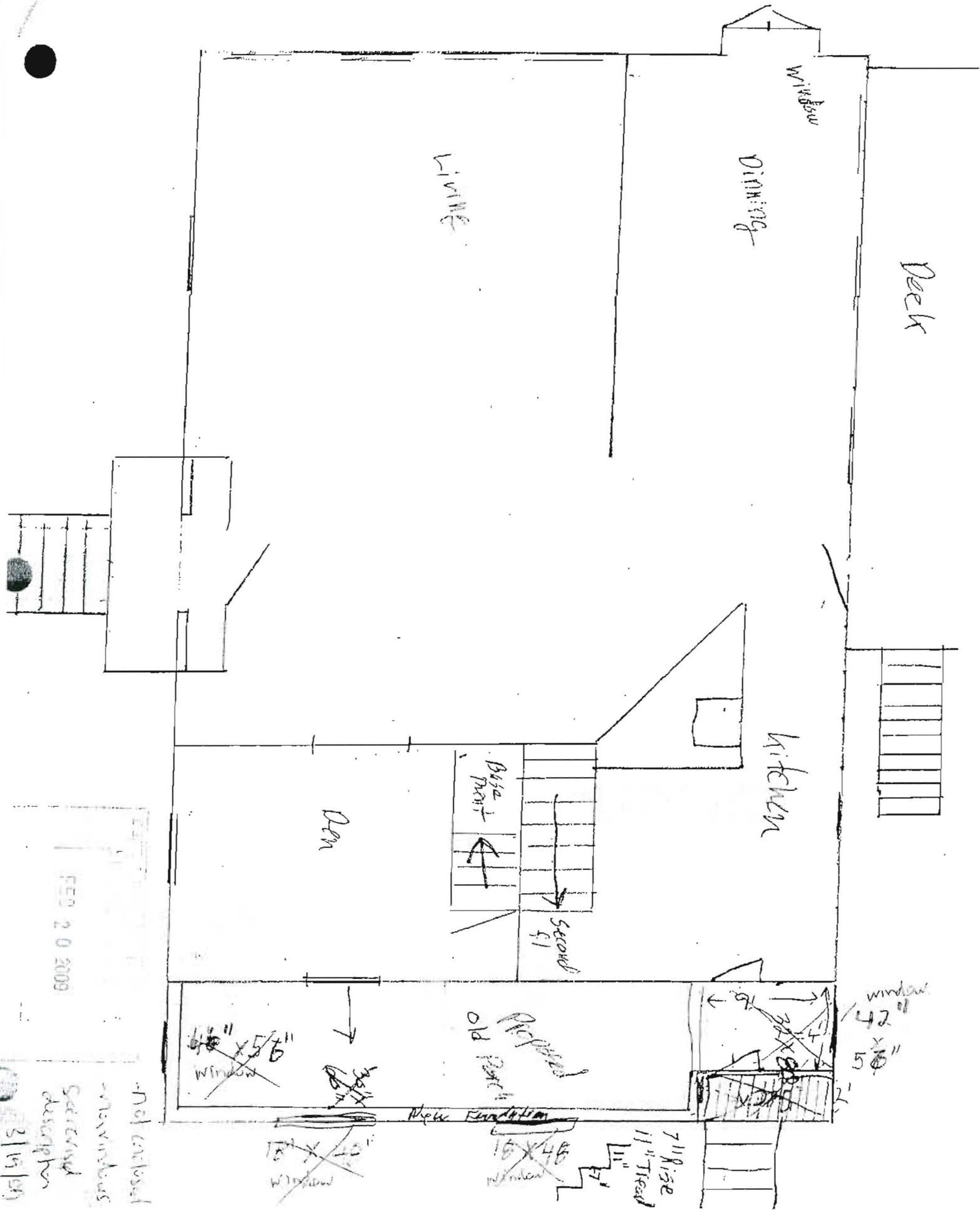
Please submit all of the information outlined on the applicable Checklist. Failure to do so will result in the automatic denial of your permit.

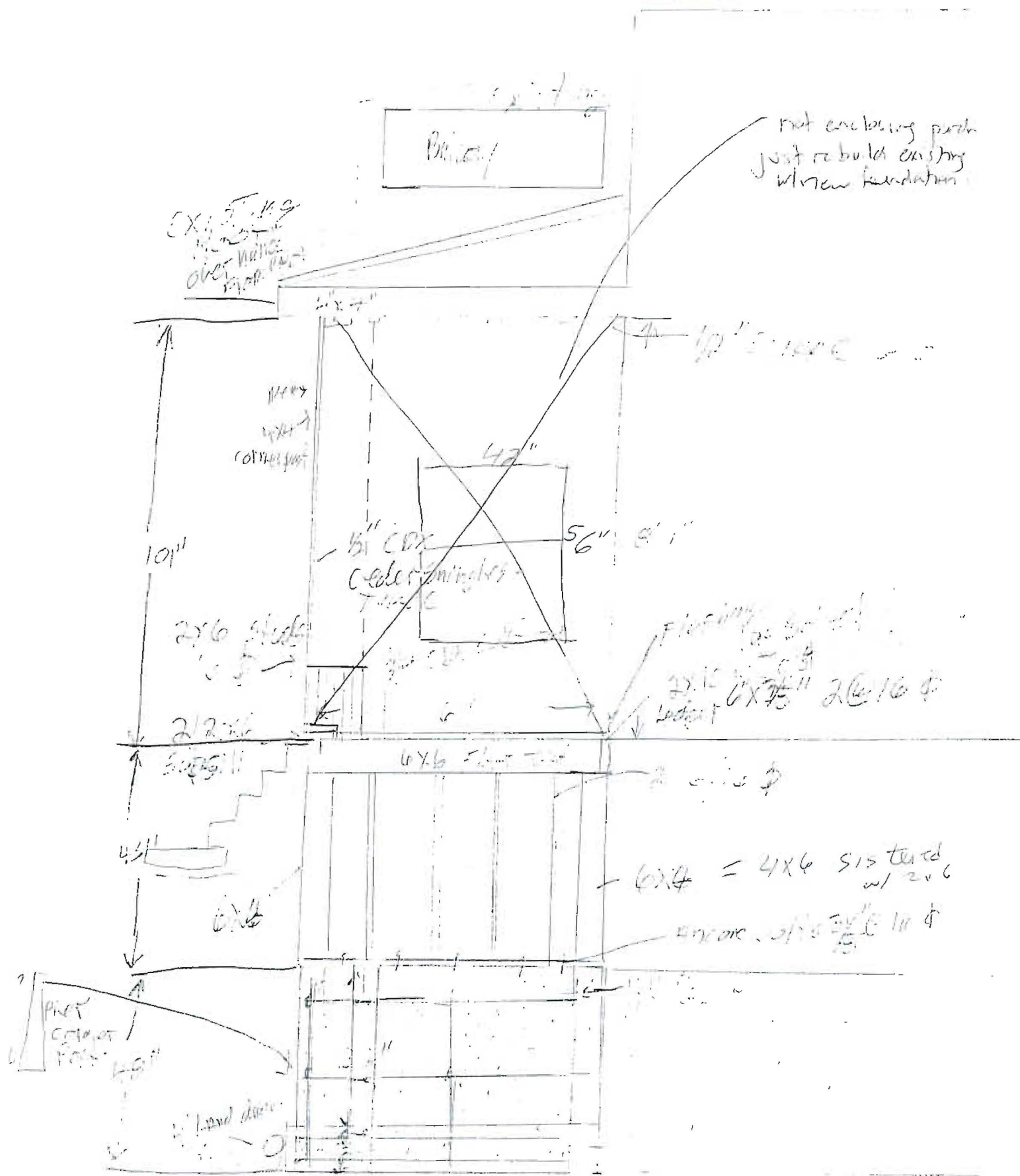
In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information or to download copies of this form and other applications visit the Inspections Division 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: Philip H. Morgan Date: Dec. 19, 2008

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





Porch

not enclosing porch
just rebuild existing
w/ new foundation

EXISTING
OVER WALLS

WALL
WALL
CORNER JOIST

1/2" CDX
Cedar sheathing

FLOORING
2x10
joist
6x7 1/2" 2 @ 16"

10'11"

2x6 studs

2x10

4x6 floor joist

4x4

4x4

4x4 = 4x6 sistered
w/ 2x6

BRICK 8'1" 2 @ 16"

PREV
CONCRETE
FLOOR

land down

Attachment #4

Integration Apped Window area to wall area based on also/9 submittal.

front wall wall area - 6' x 8'4"

$$6 \times 8.33 = 49.98 \text{ sf}$$

Window area - 46" x 56" = ~~2576~~ 2576 s. inches

$$= 17.89 \text{ sf}$$

* Window covers 35.8% of wall (17.89/49.98)

Side wall:

Wall area - 38' x 8'4"

$$- 28 \times 8.33 = 233.24 \text{ sf}$$

Window area - 18" x 24" = ~~432~~ 432 s. inches

$$= 6 \text{ sf}$$

- 2 windows = 12 sf.

door area - 30" x 80" = 2560 s. inches

$$= 17.78 \text{ sf}$$

$$\text{total area} = 29.78 \text{ sf}$$

* Windows: door cover 12.7% of wall (29.78/233.24)

rear wall:

Wall area - 6' x 8'4"

$$6 \times 8.33 = 49.98 \text{ sf}$$

Window 42" x 56" = 2352 s. inches

$$= 16.33 \text{ sf}$$

* Window covers 32.67% of wall area (16.33/49.98)
 * total percent window to wall is 19.2% (64/333.2)

Attachment #5

City of Portland
Code of Ordinances
Sec. 14-47

Land Use
Chapter 14
Rev.11-19-09

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use. Stockpiles shall be considered structures for purposes of dimensional requirements under the Land Use Code.

Stormwater detention area: A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Storm water retention area: A pond or basin used for the permanent storage of stormwater runoff.

Story: That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four (4) feet above the floor does not exceed two-thirds of the floor area of the story immediately below it and which does not contain an independent apartment or dwelling unit. A story which exceeds eighteen (18) feet in height shall be counted as two (2) stories. A basement shall be counted as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

Stream: A free-flowing body of water from the outlet of the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

Street: A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street line: The line of demarcation between a street and the abutting land.

Structure: Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground.

Studios for artists and craftspeople: A facility for the production of arts and crafts products such as paintings, sculpture

VACANT LOT
 DWELLING DATA (EST)
 CONSTRUCTION
 2.0 STORY
 1 BRICK 4 CONC BLK 7 STONE
 2 FRAME 5 STUCCO 8
 3 FR & MAS. 6 9

OCCUPANCY
 SINGLE FAMILY ✓
 TWO FAMILY
 APARTMENT
 NO. UNITS
 OTHER
 COTTAGE
 UNFIN.
 FIN. OPEN
 FIN. DIV.

GROUND FLOOR AREA
 ADDITION POINTS
 GRADE FACTOR C + 1.0
 C & D FACTOR + -
 CDU - 1.1 DEPRECIATION %

OTHER FEATURES
 MASONRY TRIM
 MODERNIZED KITCHEN
 RECREATION ROOM
 WOODBURNING FIREPLACE
 BASEMENT GARAGE
 ATTACHED GARAGE
 TOTAL OTHER FEATURE POINTS

AGE
 LIVING ACCOMMODATIONS
 TOTAL ROOMS
 BED ROOMS
 FAMILY ROOMS
 FULL BATHS
 HALF BATHS
 TOTAL FIXTURES

PLUMBING M O
 BATHROOM
 TOILET ROOM
 FLUSH
 LAVATORY
 SHOWER EXTRA
 KITCHEN SINK
 HOT WATER HEATER
 NO PLUMBING
 WATER ONLY

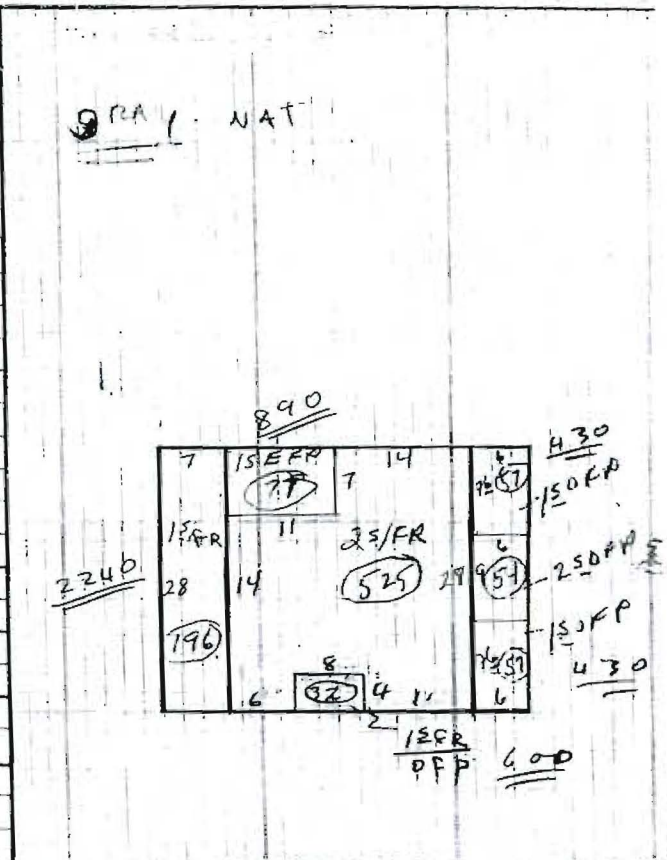
DWELLING COMPUTATIONS
 19 19 19 19
 BASE PRICE 18,850
 PLUMBING 3,500
 BASEMENT
 BASEMENT FIN 8,530
 ATTIC
 HEATING 1,870
 ADDITIONS 5,140
 DORMERS
 TOTAL BASE 36,890
 GRADE FACTOR 1.10
 TOTAL 40,580
 OTHER FEATURES
 TOTAL 40,580
 C & D FACTOR
 REPL. COST 40,580
 DEPREC. 30/10
 R C I D 25,570

FOUNDATION
 CONCRETE
 VC. BLOCK WALLS
 ICK STONE WALLS
 RS. SLAB/DRAWL
 SEMENT FULL
 0 1/4 1/2 3/4
 EXTERIOR WALLS
 DD VINYL ALUM
 INGLES WOOD ✓
 INGLES ASPHALT
 INGLES ASBESTOS
 ICK VENEER
 ANKET INSULATION
 OF INSULATION

REMODELING DATA
 KITCHEN
 PLUMBING
 HEATING
 GENERAL

BASEMENT & ATTIC
 FIN. BSMT AREA
 HEAD ROOM
 GARAGE S O
 ATTIC FL & STR.
 FINISHED ATTIC
 DORMER LF
 INTERIOR FINISH
 PINE
 HARDWOOD
 PLASTER
 DRYWALL ✓✓
 PANELING

REPL. COST
 DEPREC.
 R C I D



ROOFING
 INGLES ASPHALT ✓
 UNFINISHED
 HEATING
 HOT WATER RAD BR
 STEAM
 HOT AIR FORCED
 FLOOR FURNACE
 ELECTRIC 2 ✓
 AIR CONDITIONING
 UNIT HEATER
 NO OF HTG STS
 SOLAR
 NO HEAT 1 2 3

ECONOMIC CLASS
 OVER BUILT
 UNDER BUILT X

OTHER BUILDINGS AND YARD
 NO. TYPE SIZE GRADE RATE REPL. COST DEPR. R.C.I.D. TYPE CODE
 1
 2
 3
 4
 5
 TOTAL VALUE

NOTES: 7x24
 '81-011 1-1111 1=FR

FLOORS
 CONCRETE
 RTH
 IE
 HGWOOD
 TA TILE
 RPET

OWNER
 TENANT
 NO ANSWER ✓
 INSPECTED
 REFUSED ENTRY
 INFO @ DOOR
 REFUSED INFO

TOTAL VALUE BUILDINGS 25,570
 YEAR
 NOTES:
 1981 assessor's card

TYPE CODE
 01 GARAGE
 02 CARPORT
 03 PATIO
 04 SHED
 05 POOL
 06 BARN
 A Hainwood #16



City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Variance Appeal Application

Applicant Information:

Philip H. Morgan
 Name

Business Name

30 Barkley Ave.
 Address

Auburn, ME 04210

207-786-3102
 Telephone

Fax

Applicant's Right, Title or Interest in Subject Property

(e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-2

Existing Use of Property:

Residence

Subject Property Information:

8 Ryefield Street, Peaks Island

Property Address

84 E 5

Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone

Fax

Variance from Section 14 - 145.11 (c)(3)

The applicant seeks a reduction in the rear setback from 25 feet to 6 feet, 8 inches; a reduction in the side setback from 20 feet to 11.5 feet; a reduction in the 75 foot shoreland zone setback to 26 feet, 6 inches; and an increase in the maximum lot coverage to 38.4%. The variances would permit retention of the existing rear deck, stairs, and tent shed without any new construction activity.



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]
 Signature of Applicant

11/16/09
 Date

Attachment to Variance Appeal Application

Owner: Philip H. Morgan
Subject Property: 8 Ryefield Street, Peaks Island

1. Can the land yield a reasonable return (not the highest return) without the granting of a variance?

No. The dwelling on the property needs a secondary point of ingress and egress for safety and convenience. The existing exterior door that leads to the deck for which this after-the-fact variance is sought cannot be relocated anywhere outside of the 75-foot shoreland zone. The entire structure is within that 75-foot setback. Furthermore, removal of the existing deck or reducing its size would require more disruption within the shoreland zone than would permitting it to remain.

2. Are there factors which are unique to this property, and not to the general conditions of the neighborhood, which create a need for a variance?

Yes. The lot in question is less than 5,000 square feet in area, while the minimum lot size in this IR-2 zone is 20,000 square feet. More importantly, virtually all of this lot is within the shoreland zone, certainly qualifying it as unique and not a general condition of the neighborhood.

3. Will the granting of the variance alter the essential character of the locality?

No. The grant of a variance will maintain the status quo, permitting a deck that has been in place for many years. There will be no discernible impact on the essential character of the neighborhood.

4. Is the hardship a result of the action taken by the applicant or a prior owner (self-created hardship)?

No. The hardship results from adoption of the Natural Resources Protection Act that was enacted subsequent to the construction of the deck.

MITTEL ASEN, 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

85 EXCHANGE STREET, 4th FLOOR
PORTLAND, MAINE 04101

PHONE 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

November 9, 2009

VIA HAND DELIVERY

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

Re: *Interpretation Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5; Permit # 08-1580 and*

*Hardship Variance Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5*

Dear Members of the Zoning Board of Appeals:

This office represents Philip H. Morgan, owner of property known as 8 Ryefield Street, Peaks Island, Maine. Please see the enclosed authorization letter signed by Mr. Morgan authorizing me to pursue this appeal. We are pursuing two separate appeals that concern the same property. This letter addresses both of those appeals.

Interpretation Appeal

In her letter of March 16, 2009, Ann Machado denies Mr. Morgan's application for Building Permit # 08-1580. The offending part of the application is an open porch covered by a roof. The porch and roof do not meet the required minimum side setback of 20 feet. In fact, the porch and roof extend to the side property line with no setback. As Ms. Machado points out, the



Zoning Ordinance permits enclosure of such an open porch under the provisions of Section 14-427: “Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any yard required by this article may be enclosed if the major portion of the enclosure is of glass. (Code 1968, § 602.19.F).”

The depth of the porch that Mr. Morgan seeks to enclose is only 5’-6” deep. Thus, the difference between maintaining the open porch and its roof and enclosing it with a wall is minimal. Arguably, the only property affected by the enclosure is the abutting property that would have a clear view of the five-and-a-half-foot-closer exterior wall and front entrance. Given that the open deck will, under the proposed permit, become interior living space, the question of quantity and positioning of windows and glass doors becomes important to both the applicant and his abutter.

The City’s interpretation of 14-427 is that the exterior walls of the porch enclosure must be a minimum of 50% glass by area. The “long” wall of the open porch faces directly north. In terms of heating efficiency, it is undesirable to load a north-facing wall with windows and glass doors. Not only are windows and doors far more expensive to purchase than gypsum wallboard and siding, but the space they enclose is much more expensive to heat. The thermal resistance of a typical 2 X 6 stud wall is R-19; the thermal resistance of a double-paned glass window is typically less than R-2.

Aesthetically, a wall that is 50% glass by area is quite unusual. An eight-foot-high wall would have to have continuous windows that reach from two feet above the floor to two feet below the ceiling *for the entire width of the wall!*

It is easy to understand that in situations where the Ordinance provides an “automatic” relaxing of the setback requirement, as in Section 14-427, certain conditions or restrictions might apply. At first thought, the abutter might object to seeing his neighbor’s covered porch—very close to, or on the property line—enclosed with a blank wall. But it’s equally likely that the abutter would choose *not* to be faced with a new exterior wall that is *more than 50% windows and glass doors* (the interpretation given to 14-427 by the Zoning Administrator). A mostly-glass exterior wall just inches or feet from a property line calls to mind the notion of “living in a fishbowl” for both the applicant and the abutter. While there may be no universally preferred amount of glass in such situations, it certainly seems likely that *moderation* is a prudent goal. Mr. Morgan proposes to reduce the amount of glass from 50% to 25%, thereby moderating the amount of glass area in his proposed enclosure wall .

One alternative to attempting to divine the intent of the Ordinance’s drafters is for the Zoning Board of Appeals to grant a reduction in the setback from 20 feet to 0 feet, thereby avoiding the provisions of Section 14-427. We hope that the Board can empathize with the applicant in his effort to enclose his porch in a fashion that is practical, attractive, and favored by all concerned.

Hardship Variance Appeal

In her letter of March 24, 2009, Ann Machado orders the forced removal of a rear deck, stairs, and free-standing “tent shed” (“they cannot be permitted and therefore need to be

removed"). Mr. Morgan merely wants to keep the deck, stairs, and tent. No new construction of any kind is proposed.


The deck and stairs provide for entry to and exit from the rear of the dwelling. They have been in place since before 1995 when Mr. Morgan's family purchased the property from the mortgagee foreclosing upon the previous owner. Please see attached deed from P. J. Currier Lumber Co., Inc. to Philip H. Morgan and Edward A. Morgan, Personal Representatives of the Estate of Armand M. Morgan. The deck and stairs enclose no space and present no impervious surface that would increase the speed or volume of storm water runoff. It would have been virtually impossible for the Morgan family or its title attorney to have ascertained that the deck and stairs were constructed without a permit—if, in fact, that is the case.

Removal of the deck and stairs would require a certain amount of disruption to the shoreland zone, with no attendant benefit or advantage as a result of the removal. From the standpoint of life-safety considerations, the rear door to the dwelling is the only secondary access and egress. In the event of fire or other emergency, removal of the rear door would leave only the front door through which occupants could escape the house or emergency workers could gain entry to the house. In order to make the rear door useable, some form of porch or deck and a stairway to the ground is required. Removal of the present deck and stairs and replacement with a smaller "porch" certainly would be more disruptive to the fragile shoreland-zoned land beneath the deck than permitting the deck and stairs to remain.

The "tent shed," as it is described in Ms. Machado's letter to Mr. Morgan, is simply a tent. It fails to satisfy the Zoning Ordinance's definition of "structure" in several ways. Section 14-47 of the Ordinance defines a structure as "Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground." "Member" is not defined in the Ordinance. The tent is constructed of a continuous fabric supported by a perimeter metal framework. Arguably, there is no "member," in the sense of conventional building materials to construct a building. Furthermore, the tent neither "requires a fixed location" nor requires that it be "attached to something having a fixed location." The tent, but for its size, is no different from a child's fabric-and-frame kite that might be fastened to the limb of a tree (a "fixed location on the ground"). The determination that a kite or the tent in question satisfies the definition of "structure" seems to defy logic.

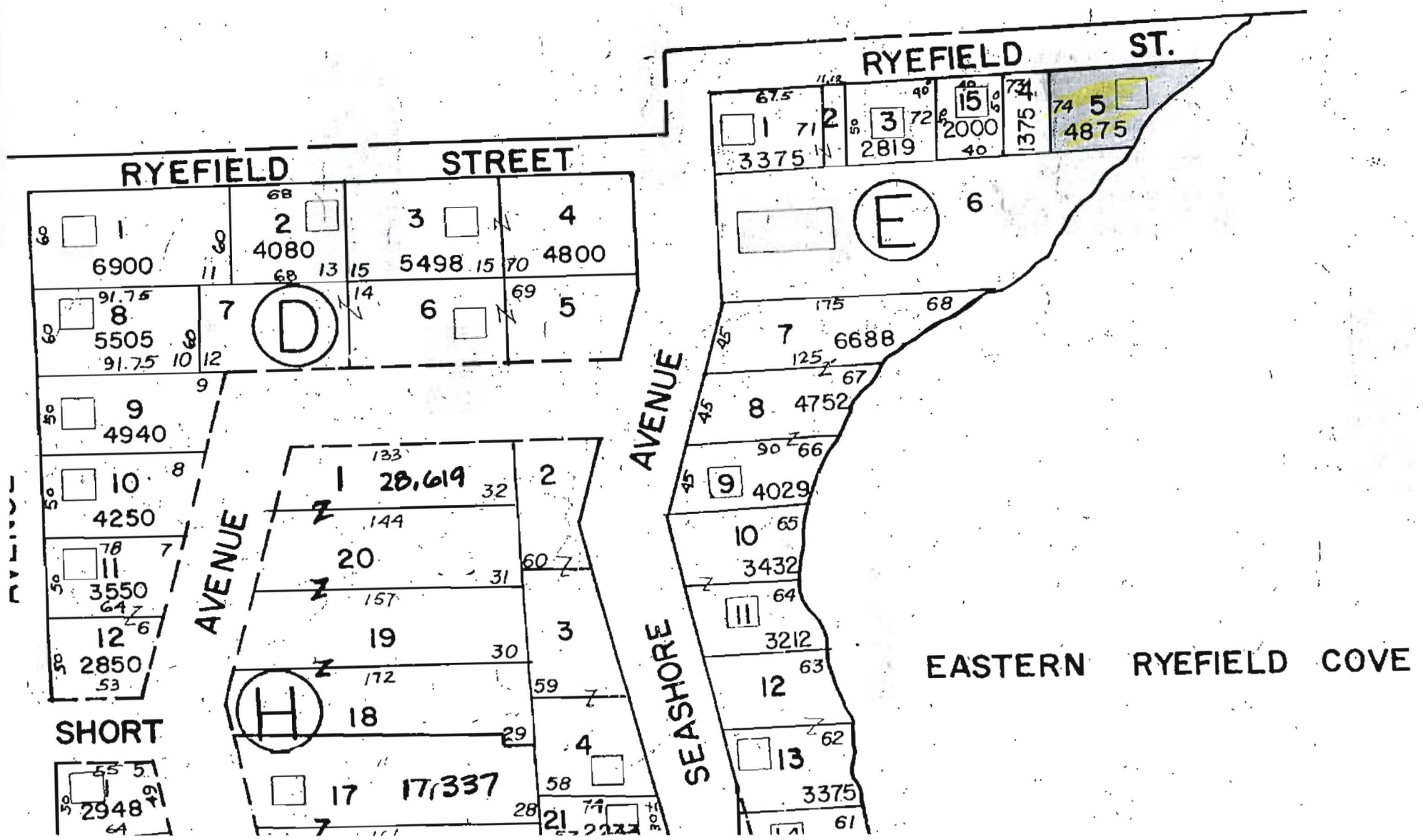
It is noteworthy that the subject lot is extremely small (somewhere between 3393 square feet and 4875 square feet). The minimum lot size is 20,000 square feet in this IR-2 zone. Moreover, virtually all of the lot is within the shoreland zone, leaving the owner no options to modify the dwelling to increase its conformity with the Portland Zoning Ordinance.

We hope the Board will find that the applicant has met all of the requirements for a hardship variance.

Sincerely,

Jonathan L. Goldberg

Enclosures

F:\Client List\JLG\Morgan, Phil\09 05 18 ZBA Letter For Interpretation Appeal.Doc



RYEFIELD STREET

RYEFIELD ST.

AVENUE

SEASHORE AVENUE

EASTERN RYEFIELD COVE

SHORT

1 6900	2 4080	3 5498	4 4800
8 5505	(D) 7	6	5

9 4940
10 4250
11 3550
12 2850

1 28,619	2
20	3
19	3
(H) 18	4
17 17,337	21

1 3375	2 2819	3 2000	4 1375	5 4875
(E) 6				
7 6688	8 4752	9 4029	10 3432	11 3212
12 3375	13 3375	14 3375	15 2000	16 4875





61231

QUITCLAIM DEED WITHOUT COVENANT
(Release Deed)

KNOW ALL MEN BY THESE PRESENTS, that, P.J. Currier Lumber Co. Inc., a/k/a P.J. Currier Lumber Co., a corporation organized and existing under the laws of the State of New Hampshire, and having an office at and a mailing address of Route 101A, Amherst, New Hampshire, for consideration paid, does hereby remise, release, bargain, sell and convey and forever quitclaim unto Philip H. Morgan and Edward A. Morgan as Personal Representatives of the Estate of Armand M. Morgan, of 30 Barkley Avenue, Auburn, Maine, all its right, title and interest in and to a certain lot or parcel of land located in the City of Portland, County of Cumberland, and State of Maine, and being more particularly described as follows:

A certain lot or parcel of land with the buildings thereon, situated on the southerly end of Peaks Island, City of Portland, County of Cumberland and State of Maine, adjoining the property of the Fifth Maine Regimental Association, being Lot No. 74 as delineated on a "Plan of the Henry M. Brackett Estate", made by J.B. Jones, surveyor, October 1900, and recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 57. Said Lot No. 74 may be more particularly bounded and described as follows:

Beginning at an iron monument set in the easterly side line of land of said Association at the southwesterly corner of Lot No. 73, thence running, North 87° East by said lot, fifty (50) feet to an iron monument and land reserved for a street fifty (50) feet wide; thence South 3° East by said street ninety-nine (99) feet, more or less, to an iron monument at the seashore; thence Northwesterly by said shore ninety (90) feet, more or less, to land of said Association; thence North 3° West by said Association's land thirty-six (36) feet to the point of beginning.

Together with the shore lying below and adjacent thereto.

Subject to and with the benefit of all rights, reservations and restrictions, rights of way and easements insofar as the same may be of record and applicable thereto.

This deed is given pursuant to the Amended Judgment of Foreclosure and Order of Sale entered in the Portland District Court, Division of Southern Cumberland, Docket No. POR-92-CV-879, located in Portland, Maine on April 21, 1995 in an action brought by P.J. Currier Lumber Co., Inc., a/k/a P.J. Currier Lumber Co. against W. Robert Nolte and Anne L. Nolte, defendants, and Inhabitants of the City of Portland and the United States of America, Department of the Treasury Internal Revenue Service, parties-in-interest, for the foreclosure of a mortgage recorded at the Cumberland County Registry of Deeds in Book 8840, Page 110.

BK 12226 PG 308

IN WITNESS WHEREOF, P.J. Currier Lumber Co. Inc., a/k/a P. J. Currier Lumber Co has caused this instrument to be executed by Joan Randlett, its President, thereunto duly authorized, this 6th day of November, 1995.

P.J. Currier Lumber Co. Inc.
a/k/a P.J. Currier Lumber Co.

By: Joan C Randlett
Joan Randlett
President

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

DATED: November 6th, 1995

Then personally appeared the above-named Joan Randlett as President of P.J. Currier Lumber Co., Inc., a/k/a P.J. Currier Lumber Co., and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said corporation.

Before me,

SEAL

Julia A Mitchell
Notary Public

JULIA A MITCHELL, Notary Public
My Commission Expires March 31, 1997

THIS IS A CORRECTIVE DEED BEING RECORDED TO REFLECT THE PAGE NUMBER "110" ON THE LAST LINE OF THE FIRST PAGE AS IT WAS INADVERTENTLY OMITTED WHEN THE PRIOR DEED WAS RECORDED.

RECEIVED
RECORDED REGISTRY OF DEEDS

95 NOV 22 PM 1:48

CUMBERLAND COUNTY

John B O'Brien

RYEFIELD ST.

Doc #: 73160

Bk: 18062 Pg: 345

SHORT FORM DEED OF DISTRIBUTION BY
PERSONAL REPRESENTATIVES (TESTATE)

Edward A. Morgan, of Scarsdale, New York, and Philip H. Morgan of Auburn, Maine, duly appointed and acting co-Executors of the Estate of Armand M. Morgan, deceased, whose Will was duly admitted to Probate in the Probate Court of Cumberland County, Maine by the power conferred by law, and every other power, in distribution of the estate, grant to PHILIP H. MORGAN with a mailing address of 30 Barkley Avenue, Auburn, Maine 04210, being the person entitled to distribution, certain real property, together with any improvements thereon, located on Ryefield Street, Peaks Island in the City of Portland, Cumberland County, Maine; more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO, MADE A PART HEREOF, AND INCORPORATED BY REFERENCE HEREIN.

WITNESS our hands and seal as of the 22nd day of May, 2002.

WITNESS:

Katherine A. Foster
Name:

Edward A. Morgan
Edward A. Morgan
Executor of the Estate of Armand M. Morgan

Mario R. Laverie
Name:

Philip H. Morgan
Philip H. Morgan
Executor of the Estate of Armand M. Morgan

STATE OF MAINE
COUNTY OF CUMBERLAND

April 25, 2002

Personally appeared the above-named Edward A. Morgan and acknowledged the foregoing to be his free act and deed.

Before me,
Katherine A. Foster
Notary Public/~~Attorney at Law~~

KATHERINE A. FOSTER
Notary Public, Maine
My Commission Expires March 3, 2008

SEAL

STATE OF MAINE

COUNTY OF

Androscoggin

May 20, 2002

Personally appeared the above-named Philip II. Morgan and acknowledged the foregoing to be his free act and deed.

Before me,

Mariel Lavoie

Notary Public/Attorney-at-Law

SEAL

MARIE L. LAVOIE
Notary Public Maine
My Comm. Expires July 8, 2008

EXHIBIT A

That certain lot or parcel of land with the buildings thereon, situated on the southerly end of Peaks Island, City of Portland, County of Cumberland and State of Maine, adjoining the property of the Fifth Maine Regimental Association, being Lot No. 74 as delineated on a "Plan of the Henry M. Brackett Estate", made by J.B. Jones, surveyor, October 1900, and recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 57. Said Lot No. 74 may be more particularly bounded and described as follows:

Beginning at an iron monument set in the easterly side line of land of said Association at the Southwesterly corner of Lot No. 73, thence running, North 87° East by said lot, fifty (50) feet to an iron monument and land reserved for a street fifty (50) feet wide; thence South 3° East by said street ninety-nine (99) feet, more or less, to an iron monument at the seashore; thence Northwesterly by said shore ninety (90) feet, more or less, to land of said Association; thence North 3° West by said Association's land thirty-six (36) feet to the point of beginning.

Together with the shore lying below and adjacent thereto.

Subject to and with the benefit of all rights, reservations and restrictions, rights of way and easements insofar as the same may be of record and applicable thereto.

Being that same premises conveyed by P. G. Currier Lumber Co., Inc., a/k/a P.J. Currier Lumber Co., to Edward A. Morgan and Philip H. Morgan as Personal Representatives of the Estate of Armand M. Morgan, by its quitclaim deed without covenant dated October 23, 1996, and recorded in the Cumberland County Registry of Deeds in Book 12226, at page 307.

Received
Recorded Register of Deeds
Sep 10 2002 02:10P
Cumberland County
Jack O'Brien

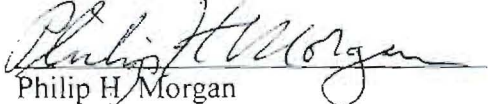
Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland , ME 04101

*Re: Appeal of Decision of the Zoning Administrator
to Deny Issue Building Permit Application Number 08-1580
by Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island*

Dear Board Members:

In all matters related to my appeal of the denial of Permit No. 08-1580 and related issues discussed in a March 24, 2009 letter from Zoning Specialist Ann Machado, I designate Jonathan L. Goldberg, Esq. and MittelAsen, LLC as my representative. I authorize Mr. Goldberg to appear on my behalf in all matters that come before the Portland Zoning Board of Appeals pursuant to my appeal of said denial and to submit any materials on my behalf. I further authorize Mr. Goldberg to speak, negotiate, prepare and sign any and all documents on my behalf pursuant to this appeal.

April 8, 2009
Date


Philip H. Morgan

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

*Re: Appeal of Decision of the Zoning Administrator
to Deny Issue Building Permit Application Number 08-1580
by Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island*

Dear Board Members:

In all matters related to my appeal of the denial of Permit No. 08-1580 and related issues discussed in a March 24, 2009 letter from Zoning Specialist Ann Machado, I designate Jonathan L. Goldberg, Esq. and MittelAsen, LLC as my representative. I authorize Mr. Goldberg to appear on my behalf in all matters that come before the Portland Zoning Board of Appeals pursuant to my appeal of said denial and to submit any materials on my behalf. I further authorize Mr. Goldberg to speak, negotiate, prepare and sign any and all documents on my behalf pursuant to this appeal.

April 8, 2009
Date


Philip H. Morgan



PORTLAND MAINE

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

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

March 24, 2009

Philip Morgan
30 Barkley Avenue
Auburn, ME 04210

RE: 8 Ryefield Street, Peaks Island – 084 E005 – IR-2 – illegal deck & tent shed – permit #08-1580

Dear Mr. Morgan,

In my review of your permit application (#08-1580), it came to my attention that the eight by twenty foot deck and stairs off the rear of the building were never permitted. The twelve by twenty foot tent shed also was not permitted. If we cannot find a permit for the deck or tent shed, we use the footprint shown on the pre-1957 assessor's card to determine what the legal footprint was in 1957 when the ordinance went into effect. Neither the deck nor the tent shed were shown on the pre-1957 assessor's card. Since they were not permitted and were not shown on the pre-1957 assessor's card, they are not legal and the property must be brought into compliance.

The property is located in the IR-2 zone. Section 14-145.11(c)(2) gives the minimum rear setback as twenty-five feet. The rear setback to the deck is about eight feet, and the rear setback to the tent shed is twenty-three feet. Section 14-145.11(c)(3) gives the minimum side setback as twenty feet. The stairs from the deck are eleven and a half feet from the side property line. Section 14-145.11(d) gives the maximum lot coverage as twenty percent. Since the lot is 3,393 square feet, the allowable lot coverage is 678.6 square feet. The footprint of the existing structure is 1,151 square feet, so it is already over the allowable lot coverage.

The property is also located in the Shoreland Zone. Section 14-449(a) states that all principal and accessory structures must be setback at least seventy-five feet from the high water line. Both the deck and tent shed are located within the seventy-five foot setback from the high water line.

You have thirty days from the date of this letter to bring your property into compliance. Since the deck and tent shed do not meet the required setbacks or the maximum allowable lot coverage, and they are located in the shoreland zone, they cannot be permitted and therefore need to be removed.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to file an appeal. If you should fail to do so, my decision is binding and no longer subject to appeal.

You may contact our office for the necessary paper work if you decide to file an appeal.

Please feel free to contact me at 874-8709 if you have any questions.

Yours truly,

Ann B. Machado
Zoning Specialist
(207) 874-8709

Cc. Terry Edwards
file

MITTEL ASEN, 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

85 EXCHANGE STREET, 4th FLOOR
PORTLAND, MAINE 04101

PHONE 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

April 15, 2009

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 Deny Issue of Building Permit Number 08-1581
to Philip Morgan for Property at 8 Ryefield Street, Peaks Island*

Dear Members of the Zoning Board of Appeals:

This office represents Philip Morgan, who owns a home at 8 Ryefield Street, Peaks Island. On behalf of Mr. Morgan, I am filing this appeal of the decision of the Zoning Administrator to deny the above-referenced Building Permit application (the "Application"). Enclosed is a letter from Mr. Morgan to the Board that authorizes me to act on his behalf with regard to the matters discussed herein.

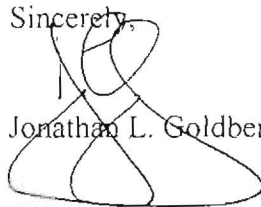
The purpose of this letter is to preserve Mr. Morgan's appeal rights with respect to the decision of Zoning Specialist Ann B. Machado as memorialized in her March 16, 2009 letter to Mr. Morgan and her March 24, 2009 letter to Mr. Morgan. We would like to investigate Mr. Morgan's options under the Portland Land Use Ordinance for enclosing the six (6) foot by twenty-eight (28) foot porch on the above-referenced property. We simply do not have enough information at hand to assert an effective appeal.

Furthermore, Ms. Machado's March 24, 2009 letter informs Mr. Morgan that his "deck and tent shed do not meet the required setbacks or the maximum allowable lot coverage, and they are located in the shoreland zone, they cannot be permitted and therefore must be removed." Mr. Morgan wishes to appeal this decision, as well. Although Ms. Machado has informed me that the decisions described in the March 16 and March 24 letters must be appealed separately, it certainly makes sense for the ZBA to hear the appeals on the same evening.

We request that the Zoning Board of Appeals treat both appeals as timely made, but stay any action to schedule the hearings pending submission of additional materials by the property owner. At this time, we are unsure whether the appeals will be styled as Interpretation Appeals, Practical Difficulty Variance Appeals, Variance (Hardship) Appeals, or some combination of two-of-these-three possibilities.

Enclosed please find our check in the amount of \$200.00 as payment in full for the appeal application fees for two (2) separate appeals as noted above. I will be away from my office until Monday, April 27, 2009. Upon my return, I will communicate with the Portland Planning and Development Department to pursue the appeals.

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

Sincerely,

Jonathan L. Goldberg

Enclosure
cc: Philip Morgan

Original



City of Portland, Maine
Department of Planning and Urban Development
Zoning Board of Appeals
Variance Appeal Application

Applicant Information:

Philip H. Morgan
Name

Business Name

30 Barkley Ave.
Address

Auburn, ME 04210

207-786-3102
Telephone Fax

Applicant's Right, Title or Interest in Subject Property

(e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-2

Existing Use of Property:

Residence

Subject Property Information:

8 Ryefield Street, Peaks Island
Property Address

84 E 5
Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone Fax

Variance from Section 14 - 145.11 (c)(3)

The applicant seeks a reduction in the rear setback from 25 feet to 8 feet; a reduction in the side setback from 20 feet to 11.5 feet; a reduction in the 75 foot shoreland zone setback; and an increase, if necessary, in the maximum lot coverage. The variances would permit retention of the existing rear deck, stairs, and tent shed without any new construction activity.

Representing: John D. DeBerg



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

The undersigned hereby makes application for a variance as 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]
Signature of Applicant

5/15/09
Date

Attachment to Variance Appeal Application

Owner: Philip H. Morgan
Subject Property: 8 Ryefield Street, Peaks Island

1. Can the land yield a reasonable return (not the highest return) without the granting of a variance?

No. The dwelling on the property needs a secondary point of ingress and egress for safety and convenience. The existing exterior door that leads to the deck for which this after-the-fact variance is sought cannot be relocated anywhere outside of the 75-foot shoreland zone. The entire structure is within that 75-foot setback. Furthermore, removal of the existing deck or reducing its size would require more disruption within the shoreland zone than would permitting it to remain.

2. Are there factors which are unique to this property, and not to the general conditions of the neighborhood, which create a need for a variance?

Yes. The lot in question is less than 5,000 square feet in area, while the minimum lot size in this IR-2 zone is 20,000 square feet. More importantly, virtually all of this lot is within the shoreland zone, certainly qualifying it as unique and not a general condition of the neighborhood.

3. Will the granting of the variance alter the essential character of the locality?

No. The grant of a variance will maintain the status quo, permitting a deck that has been in place for many years. There will be no discernible impact on the essential character of the neighborhood.

4. Is the hardship a result of the action taken by the applicant or a prior owner (self-created hardship)?

No. The hardship results from adoption of the Natural Resources Protection Act that was enacted subsequent to the construction of the deck.

MITTEL ASEN, 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

85 EXCHANGE STREET, 4th FLOOR
PORTLAND, MAINE 04101
PHONE 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

May 18, 2009

Original
5/18/09

VIA HAND DELIVERY

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

Re: *Variance Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5*

Dear Members of the Zoning Board of Appeals:

This office represents Philip H. Morgan, owner of property known as 8 Ryefield Street, Peaks Island, Maine. Please see the enclosed authorization letter signed by Mr. Morgan authorizing me to pursue this appeal.

In her letter of March 24, 2009, Ann Machado orders the forced removal of a rear deck, stairs, and free-standing "tent shed" ("they cannot be permitted and therefore need to be removed"). Mr. Morgan merely wants to keep the deck, stairs, and tent. No new construction of any kind is proposed.

The deck and stairs provide for entry to and exit from the rear of the dwelling. They have been in place since before 1995 when Mr. Morgan's family purchased the property from the mortgagee foreclosed upon the previous owner. Please see attached deed from P. J. Currier Lumber Co., Inc. to Philip H. Morgan and Edward A. Morgan, Personal Representatives of the Estate of Armand M. Morgan. They enclose no space and present no impervious surface that would increase the speed or volume of storm water runoff. It would have been virtually

impossible for the Morgan family or its title attorney to have ascertained that the deck and stairs were constructed without a permit—if, in fact, that is the case.

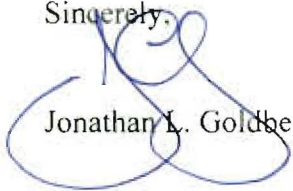
Removal of the deck and stairs would require a certain amount of disruption to the shoreland zone, with no attendant benefit or advantage as a result of the removal. From the standpoint of life-safety considerations, the rear door to the dwelling is the only secondary access and egress. In the event of fire or other emergency, removal of the rear door would leave only the front door through which occupants could escape the house or emergency workers could gain entry to the house. In order to make the rear door useable, some form of porch or deck and a stairway to the ground is required. Removal of the present deck and stairs and replacement with a smaller “porch” certainly would be more disruptive to the fragile shoreland-zoned land beneath the deck.

The “tent shed,” as it is described in Ms. Machado’s letter to Mr. Morgan, is simply a tent. It fails to satisfy the Zoning Ordinance’s definition of “structure” in several ways. Section 14-47 of the Ordinance defines a structure as “Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground.” “Member” is not defined in the Ordinance. The tent is constructed of a continuous fabric supported by a perimeter metal framework. Arguably, there is no “member,” in the sense of conventional building materials to construct a building. Furthermore, the tent neither “requires a fixed location” nor requires that it be “attached to something having a fixed location.” The tent, but for its size, is no different from a child’s fabric-and-frame kite that might be fastened to the limb of a tree (a “fixed location on the ground”). The determination that a kite or the tent in question satisfies the definition of “Structure” seems to defy logic.

It is noteworthy that the subject lot is extremely small (somewhere between 3393 square feet and 4875 square feet). The minimum lot size is 20,000 square feet in this IR-2 zone. Moreover, virtually all of the lot is within the shoreland zone, leaving the owner no options to modify the dwelling to increase its conformity with the Portland Zoning Ordinance.

We hope the Board will find that the applicant has met all of the requirements for a hardship variance.

Sincerely,



Jonathan L. Goldberg

Enclosures

F:\Client List\JLG\Morgan, Phil\09 05 18 ZBA Letter.Doc



City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Variance Appeal Application

Applicant Information:

Philip H. Morgan
 Name

Business Name

30 Barkley Ave.
 Address

Auburn, ME 04210

207-786-3102
 Telephone Fax

Applicant's Right, Title or Interest in Subject Property

(e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-2

Existing Use of Property:

Residence

Subject Property Information:

8 Ryefield Street, Peaks Island
 Property Address

84 E 5
 Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone Fax

Variance from Section 14 - 145.11 (c)(3)

The applicant seeks a reduction in the rear setback from 25 feet to 8 feet; a reduction in the side setback from 20 feet to 11.5 feet; a reduction in the 75 foot shoreland zone setback; and an increase, if necessary, in the maximum lot coverage. The variances would permit retention of the existing rear deck, stairs, and tent shed without any new construction activity.



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

The undersigned hereby makes application for a variance as 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.

5/15/09

MITTEL ASEN, LLC

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

ROBERT E. MITTEL
MICHAEL P. ASEN
PETER G. CARY
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85 EXCHANGE STREET, 4th FLOOR
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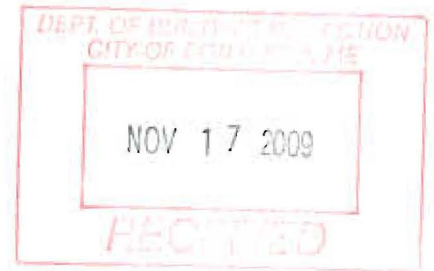
PHONE 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

November 16, 2009

VIA HAND DELIVERY

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



Re: *Interpretation Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5; Permit # 08-1580 and*

*Hardship Variance Appeal Application of Philip H. Morgan
for Property at 8 Ryefield Street, Peaks Island, Maine
C/B/L 84/E/5*

Dear Members of the Zoning Board of Appeals:

Enclosed with this letter is a revised Variance Appeal Application (initial page, only) that modifies the request for variance under 14-145.11(c)(2) (rear setback) from 25 feet to 6 feet 8 inches; under 14-145.11(c)(3) (side setback) from 20 feet to 11 feet 6 inches; under 14-449(a) (shoreland zone) a reduction in the shoreland zone setback from 75 feet to 26 feet 6 inches; and under 14-145.11(d) (lot coverage) an increase from 20% to 38.4%. Please substitute this revised page for the one that accompanied the application under my letter of November 9, 2009.

Additionally, the application concerning the "tent shed" should be considered as part of our interpretation appeal, not part of the hardship variance appeal.

Sincerely,

Jonathan L. Goldberg

Enclosure

Ann Machado - RE: Morgan Variance Appeal, 8 Ryefield Street, Peaks Isalnd

From: "Jonathan Goldberg" <JGoldberg@mittelasen.com>
To: "Ann Machado" <AMACHADO@portlandmaine.gov>
Date: 10/19/2009 10:03 PM
Subject: RE: Morgan Variance Appeal, 8 Ryefield Street, Peaks Isalnd

Thanks, Ann. I'll try to have the submission completed by November 9 so that you'll have a little "cushion" to give the DEP its required 20-day notice.

Regards,
Jon

From: Ann Machado [mailto:AMACHADO@portlandmaine.gov]
Sent: Monday, October 19, 2009 7:34 AM
To: Jonathan Goldberg
Cc: Marge Schmuckal
Subject: Re: Morgan Variance Appeal, 8 Ryefield Street, Peaks Isalnd

Jonathan -

You will now be on the December 3, 2009 ZBA agenda.

Ann Machado
Zoning Specialist
207.874.8709

>>> "Jonathan Goldberg" <JGoldberg@mittelasen.com> 10/16 11:54 AM >>>
Following my voice-mail message to you earlier today, I write to confirm my request to continue the above-referenced hearing to the Zoning Board of Appeals' next regular meeting in December. Due to other commitments that were unanticipated, I fear that I am unable to finish all of the required submissions that you requested by October 19, 2009 in order to put this matter on the agenda for November. As you will recall, because the property in question is with the shoreland zone, the Department of Environmental Protection needs to be notified of the variance request at least 20 days before the ZBA Hearing.

Thank you in advance for your understanding.

Regards,
Jon

Jonathan L. Goldberg
MittelAsen, LLC and Portland Title LLC
P O Box 427
Portland, ME 04112-0427

(207) 699 5735 direct dial
(207) 775 3101 reception

Ann Machado - RE: Morgan ZBA Appeals

From: "Jonathan Goldberg" <JGoldberg@mittelasen.com>
To: "Ann Machado" <AMACHADO@portlandmaine.gov>
Date: 5/20/2009 12:57 PM
Subject: RE: Morgan ZBA Appeals

Thanks, Ann.
Jon

From: Ann Machado [mailto:AMACHADO@portlandmaine.gov]
Sent: Wednesday, May 20, 2009 12:54 PM
To: Jonathan Goldberg
Subject: Re: Morgan ZBA Appeals

Jon -

We are all set with your request. The two appeals for 8 Ryefield Street will be on the October 1, 2009 agenda.

You can submit the extra information for the variance appeal any time.

Thanks.

Ann Machado
Zoning Specialist
(207) 874-8709

>>> "Jonathan Goldberg" <JGoldberg@mittelasen.com> 05/20 9:51 AM >>>

Dear Ms. Machado:

Following our telephone conversation earlier today, I write to request a postponement of the hearings for Mr. Morgan's Interpretation Appeal and his Variance Appeal concerning property at 8 Ryefield Street, Peaks Island.

You have informed me that the City must give notice of the appeals hearings to the Department of Environmental Protection at least 20 days in advance of the hearings because the appeals concern property within the shoreland zone. Hence, there is insufficient time to notify the DEP for June 4, 2009 hearing.

Mr. Morgan will be in Alaska for the entire summer, returning to Maine sometime after September 15, 2009. I cannot be sure that Mr. Morgan will be back for the September 17, 2009 meeting, but he will almost certainly be back in time for the October 1, 2009 ZBA meeting.

We respectfully request that the Morgan appeals to the ZBA be postponed until the October 1, 2009 meeting.

Thank you for your consideration.

Jon Goldberg

Ann Machado - Re: Morgan Variance Appeal - 8 Ryefield, Peaks Island

From: Ann Machado
To: Jonathan Goldberg
Date: 9/14/2009 10:24 AM
Subject: Re: Morgan Variance Appeal - 8 Ryefield, Peaks Island
CC: Marge Schmuckal

Jonathan -

It is OK with us if 8 Ryefield Street is on the November 12, 2009 ZBA agenda, as long as the application is in by October 19, 2009 at the latest, so we can get it to DEP at least 20 days in advance of November 12, 2009.

Ann Machado
Zoning Specialist
(207) 874-8709

>>> "Jonathan Goldberg" <JGoldberg@mittelasen.com> 09/10 2:09 PM >>>

Pursuant to our discussion yesterday, I write to request that the above-referenced Appeal be continued until the ZBA's regularly scheduled meeting on November 12, 2009. As we discussed, the City must give notice to the DEP 20 days in advance of a variance appeal hearing that concerns property within the shoreland zone. That notice must provide a copy of the completed Appeal application. In order for you to provide such notice, I will complete the application and submit it to the City no later than October 19, 2009.

If this timetable is satisfactory, please confirm,

Thank you,
Jon

Jonathan L. Goldberg
MittelAsen, LLC and Portland Title LLC
P. O. Box 427
Portland, ME 04112-0427

(207) 699 5735 direct dial
(207) 775.3101 reception
(207) 871 0683 telecopier
jgoldberg@mittelasen.com

This email message may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If you received this email message by mistake, please notify the sender at once and destroy or delete, as appropriate, all copies of the message. Any dissemination, use, or copying by an unintended recipient is prohibited. Thank you.

IRS Circular 230 Disclosure: In order to ensure compliance with IRS Circular 230, we must inform you that any



City of Portland Zoning Board of Appeals

November 25, 2009

Jonathan Goldberg
Mittel Asen, LLC
PO Box 427
Portland, ME 04112

Dear Mr. Goldberg,

Your Interpretation Appeal and Variance Appeal have been scheduled to be heard before the Zoning Board of Appeals on **Thursday, December 3, 2009 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring a copy of your application packets with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeals highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the Legal Ad, Processing Fee and the Notices for the Interpretation Appeal and the bill for the Legal Ad and the Notices for the Variance Appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc. File

CITY OF PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No: 59400001 Applicant: Philip Morgan
Project Name: 8 Ryefield Street Location: 8 Ryefield Street, PI
CBL: 084 E005 Application Type: Variance

Current Fees: \$206.43 - Current Payments: \$100.00 = Total Due: \$106.43 (due on receipt)

<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisements	1	\$85.43
Notices	28	\$21.00
Processing Fee	0	0
Zoning Conditional Use	1	\$100
Total Current Fees:		\$206.43
Total Current Payments:		-\$100
<u>Amount Due Now:</u>		<u>\$106.43</u>

Bill to: CBL: 084 E005 Application No: 59400001
Jonathan Goldberg Invoice Date: 11/25/09 **Total Amount Due: \$106.43**
PO Box 427 *And notice 12/14/09*
Portland, ME 04112

*pd dec 18, 2009
#00651*

City of Portland

DATE: 12/18/09

TIME: 13:00:17

PZ CASH RECEIPT

PROJECT #: 09-59400001
PROJECT DESC: VARIANCE APPEAL - 8 RYEFIELD STREET, PEA
RECEIVED FROM: JONATHAN GOLDBERG
RECEIPT NUMBER:

FEE	DESCRIPTION	CREDIT	PAYMENT
L2	LEGAL AD ZONING BOARD		85.43
N1	NOTICING ZONING BOARD		21.00
		TOTAL AMOUNT:	106.43



CITY OF PORTLAND, MAINE

Department of Building Inspections

Original Receipt

December 15 2009

Received from Mittelner, LLC

Location of Work E. Angelfield St.

Cost of Construction \$ _____ Building Fee: _____

Permit Fee \$ _____ Site Fee: _____

Certificate of Occupancy Fee: _____

Total: 462.86

Building (11) _____ Plumbing (15) _____ Electrical (12) _____ Site Plan (12) _____

Other Interpretation, Variance

CBL: 084 E 005

Check #: 006651 Total Collected \$ 262.86

**No work is to be started until permit issued.
Please keep original receipt for your records.**

Taken by: [Signature]

MITTELASEN, LLC
EXPENSE ACCOUNT
85 EXCHANGE ST • P O BOX 427
PORTLAND, ME 04112 (207) 775-3101



52-150-112

12/14/2009

006651

PAY TO THE ORDER OF City of Portland

\$ **262.86

Two Hundred Sixty-Two and 86/100 ***** DOLLARS

City of Portland
Department of Planning & Development
389 Congress St.
Portland, ME 04101

AUTHORIZED SIGNATURE

MEMO
Copies of invoices attached

⑈006651⑈ ⑆011201500⑆ 0052406 9⑈

DEC 18 2009

Security Features Details on Back

City of Portland

DATE: 12/15/09

TIME: 12:00:14

PZ CASH RECEIPT

PROJECT #: 09-59400001

PROJECT DESC: VARIANCE APPEAL - 8 RYEFIELD STREET, PEA

RECEIVED FROM: JONATHAN GOLDBERG

RECEIPT NUMBER:

FEE	DESCRIPTION	CREDIT	PAYMENT
Z1	ZONING BOARD OF APPEALS		100.00
		TOTAL AMOUNT:	100.00

CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No: 0000-1509
Project Name: 8 Ryefield St
CBL: 084 E005001
Invoice Date: 04/17/2009

Applicant: Morgan Philip H
Location: 8 RYEFIELD ST
Application Type: Variance Appeal

Previous Balance	-	Payment Received	+	Current Fees	-	Current Payment	=	Total Due	Payment Due Date
\$0.00		\$0.00		\$100.00		\$100.00		\$0.00	On Receipt

Previous Balance **\$0.00**

Fee Description	Qty	Fee/Deposit Charge		
Appeal Fee	1	\$100.00		
		<u>\$100.00</u>		
		Total Current Fees:	+	\$100.00
		Total Current Payments:	-	\$100.00
		Amount Due Now:		\$0.00

Bill to: Morgan Philip H
30 Barkley Ave
Auburn . ME 04210

CBL 084 E005001
Application No: 0000-1509
Invoice Date: 04/17/2009
Invoice No: 34268
Total Amt Due: \$0.00
Payment Amount: \$100.00

006379

MITTELASEN, LLC
EXPENSE ACCOUNT
85 EXCHANGE ST. • P. O. BOX 427
PORTLAND, ME 04112 (207) 775-3101

MAINE BANK & TRUST
• a maine bank for maine people •

52-150-112

4/15/2009

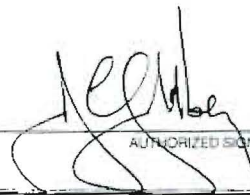
PAY TO THE ORDER OF: City of Portland

\$ **200.00

Two Hundred and 00/100

DOLLARS

City of Portland



AUTHORIZED SIGNATURE

MEMO Appeals Fees: Philip Morgan

⑈006379⑈ ⑆01201500⑆ 0052406 9⑈

MITTELASEN, LLC EXPENSE ACCOUNT

City of Portland
JLG ADV

MOrgan, Phil unpd

4/15/2009

006379

200 00

EXPENSE AC Appeals Fees Philip Morgan

200.00

MITTELASEN, LLC EXPENSE ACCOUNT

City of Portland
JLG ADV

MOrgan, Phil unpd

4/15/2009

006379

200.00

EXPENSE AC Appeals Fees Philip Morgan

200.00



CITY OF PORTLAND, MAINE

Department of Building Inspections

Original Receipt

9/15 20 09

Received from MALCOLM HENNINGSEN

Location of Work 247 York St

Cost of Construction \$ _____ Building Fee: _____

Permit Fee \$ 300 Site Fee: _____

Certificate of Occupancy Fee: _____

Total: 300

Building (1L) _____ Plumbing (15) _____ Electrical (12) _____ Site Plan (12) _____

Other 2 Coning Special Appeals

CBL: 8753

Check #: _____ Total Collected \$ 300

No work is to be started until permit issued.

If permit is Withdrawn or Denied, amount of the Refund is based on \$20.00 or 20% of the fee, (whichever is greater)

In order to receive a refund, you MUST present the Original Receipt.

Taken by: [Signature]

- WHITE - Applicant's Copy
- YELLOW - Office Copy
- PINK - Permit Copy

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 11/23/2009 1:38:17 PM
Subject: Re: Zoning Board of Appeals Legal Ad

Hi Ann,
All set to run your ad on Friday, November 27.
The cost is \$256.30
Thank you,
Joan

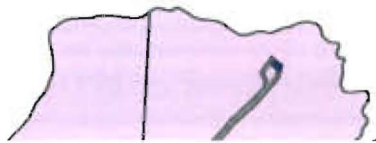
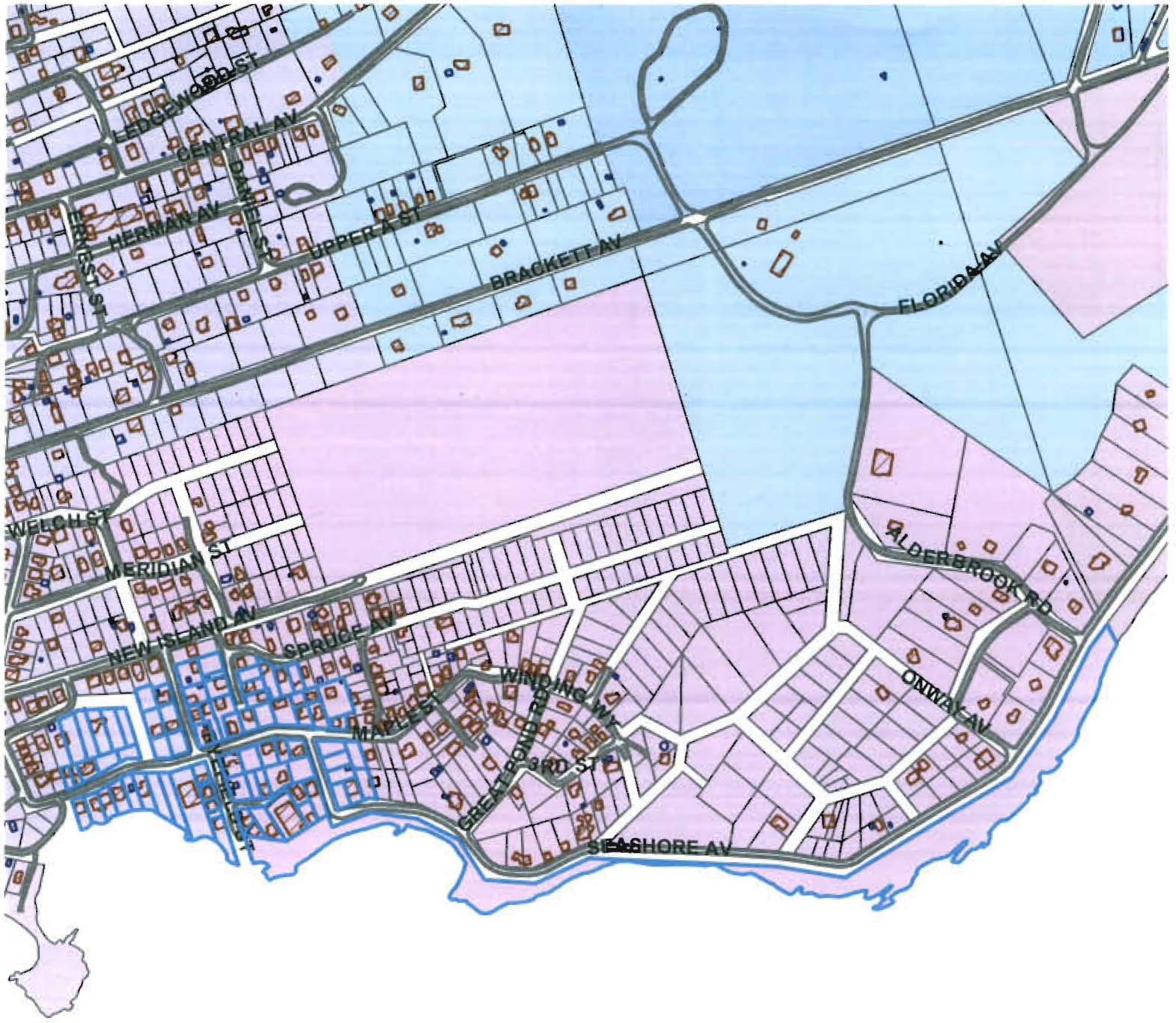
Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

Ann Machado wrote:
> Joan -
>
> Attached (this time it really is!) is the Zoning Board of Appeals
> legal ad for Friday, November 27, 2009
>
> Thanks
>
> Ann Machado
> 874.8709

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	ADAMS SHIRLEY L	470 CILLEY HILL RD UNDERHILL, VT 05489	13 VETERAN ST	1
	ANDERSON LILIEEN L	PO BOX 83 PEAKS ISLAND, ME 04108	18 RYEFIELD ST	1
	AT LONG LAST LLC	5605 PARK ST CHEVY CHASE, MD 20815	11 SPRUCE AVE	1
	BAROWITZ ELLIOTT & JANE JTS	330 LAFAYETTE ST NEW YORK, NY 10012	11 SEASHORE AVE	1
	BIENKOWSKI JEFFREY M & DIANE H BIENKOWSKI JTS	2 RYDER ST ARLINGTON, MA 02476	8 MAPLE ST	1
	BLUM JOANN C	17 EDISON AVE RUTLAND, MA 01543	105 SEASHORE AVE	1
	BOISJOLY RUSSELL P & CAROL A SOMERS	12952 PENNELL PINES RD BOYNTON BEACH, FL 33436	87 SEASHORE AVE	1
	BROWNE CARTER & BARBARA C	55 MYSTIC VALLEY PKWY WINCHESTER, MA 01890	82 SEASHORE AVE	1
	CASHMAN JOHN E & MARY JO JTS	8 FARMS EDGE WAY CUMBERLAND, ME 04021	23 SEASHORE AVE	1
	CHALOGIAS LINDA L & CHRISTOS JTS ETAL	17 8TH MAINE AVE PEAKS ISLAND, ME 04108	17 8TH MAINE AVE	1
	CHASE ELIZABETH PRICE	4970 E RIVER RD TUCSON, AZ 85718	18 8TH MAINE AVE	1
	CORBETT JOHN G	5112 HUNTER TRAIL HIXSON, TN 37343	12 8TH MAINE AVE	1
	DEMOS STEPHEN KW VET & LAVINIA C JTS	25 CRESCENT AVE PEAKS ISLAND, ME 04108	25 CRESCENT AVE	1
	DESMOND WILLIAM J III	33 SEASHORE AVE PEAKS ISLAND, ME 04108	33 SEASHORE AVE	1
	EIGHTH MAINE REG MEM ASSOC	MAINE AVE PEAKS ISLAND, ME 04108	13 8TH MAINE AVE	1
	ELTMAN PATRICIA	41 COTTAGE RD SOUTH PORTLAND, ME 04106	49 RYEFIELD ST	1
	ESOCOFF ANDREW S & KATRINA M ESOCOFF JTS	3 VETERANS ST PEAKS ISLAND, ME 04108	3 VETERAN ST	1
	FAGAN PAUL C & MAUREEN F GORDON TRUSTEES	98 SHERMANS POINT RD CAMDEN, ME 04843	38 RYEFIELD ST	1
	FIFTH MAINE REGIMENT COMMUNITY CENTER	PEAKS ISLAND, ME 04108	45 SEASHORE AVE	1
	FOSTER VERONICA	76 SEASHORE AVE PEAKS ISLAND, ME 04108	76 SEASHORE AVE	1
	FOSTER VIRGINIA L WID WWII W STANLEY FOSTER HEIRS	2 MAPLE ST PEAKS ISLAND, ME 04108	2 MAPLE ST	1
	HALL BRUCE T & SANDRA L HALL	P.O BOX 212 W.GROTON, MA 01472	49 SEASHORE AVE	1
	HARMON MARGARET L	40 SEASHORE AVE PEAKS ISLAND, ME 04108	40 SEASHORE AVE	1
	HART VALENTINE C & GRACE A VALENZUELA	29 SUNNYFIELD LN CUMBERLAND, ME 04021	11 CRESCENT AVE	1
	HATFIELD DOUGLAS S & PAUL L KNDX TRUSTEES	501 PRATT RD BRADFORD, VT 05033	15 SEASHORE AVE	1
	HUNT JAMES C & EMMY L JTS	54 MONTROSE AVE PORTLAND, ME 04103	69 SEASHORE AVE	1

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	KOSEL SANDRA C	8 RIVER RD DR ESSEX , CT 06426	78 SEASHORE AVE	1
	LYNCH DANIEL P & PATRICIA F JTS	43 WILLIAMSBURG DR SPRINGFIELD , MA 01108	37 RYEFIELD ST	1
	MACDONALD MARY K	17912 TARZANA ST ENCINO , CA 91316	4 VETERAN ST	1
	MAGUIRE RICHARD A & JANE F	550 OAKLAND AVE CHARLOTTE , NC 28204	59 SEASHORE AVE	1
	MCINTYRE RICHARD J	19 SPRUCE AVE PEAKS ISLAND, ME 04108	19 SPRUCE AVE	1
	MORABITO LUCIE B	54 SEASHORE AVE PEAKS ISLAND, ME 04108	54 SEASHORE AVE	1
	MORGAN EDWARD A	8 TUNSTALL RD SCARSDALE , NY 10583	9 8TH MAINE AVE	1
	MORGAN PHILIP H	30 BARKLEY AVE AUBURN , ME 04210	8 RYEFIELD ST	1
	MOTTLA LEROY J & MARY M MOTTLA TRUSTEES	10 VETERAN ST PEAKS ISLAND , ME 04108	10 VETERAN ST	1
	NETLAND THOMAS E & LAUREN K NETLAND JTS	39 RYEFIELD ST PEAKS ISLAND , ME 04108	39 RYEFIELD ST	1
	O'BRIEN KATHERINE J WID KW	6 MAPLE ST PEAKS ISLAND , ME 04108	6 MAPLE ST	1
	O'NEILL SEAN M & DENISE M RIDEOUT JTS	18726 WILDFLOWER DR PENN VALLEY , CA 95946	62 SEASHORE AVE	1
	PERRON ROSE MARIE & THOMAS S JTS	94 HILLSIDE AVE SOUTH PORTLAND, ME 04106	14 SEASHORE AVE	1
	PERRON THOMAS S & ROSEMARIE JTS	94 HILLSIDE AVE SOUTH PORTLAND, ME 04106	16 SEASHORE AVE	1
	PERRY BARBARA R	7 RYEFIELD ST PEAKS ISLAND , ME 04108	1 RYEFIELD ST	1
	PERRY BARBARA R	7 RYEFIELD ST PEAKS ISLAND , ME 04108	7 RYEFIELD ST	1
	PERZANOSKI PAUL K & NANCY CUTHBERTSON JTS	73 SEASHORE AVE PEAKS ISLAND , ME 04108	73 SEASHORE AVE	1
	PIOTROWSKI CHARLES G & JOAN PIOTROWSKI JTS	1386 CYPRESS WAY BOCA RATON , FL 33486	23 MAPLE ST	1
	PIZEY CHRISTOPHER S	7 VETERAN ST PEAKS ISLAND , ME 04108	7 VETERAN ST	1
	SAMSON ELIZABETH ETAL	5 EASTON RD WENHAM A, MA 01984	66 SEASHORE AVE	1
	SAMSON KEVIN & ELIZABETH SAMSON JTS	46 RYEFIELD ST PEAKS ISLAND , ME 04108	46 RYEFIELD ST	1
	SCHILLER FRANK E	113 NEW ISLAND AVE PEAKS ISLAND, ME 04108	16 VETERAN ST	0
	SCOBLYONKO DAVID P	41 E WALL ST BETHLEHEM , PA 18018	90 SEASHORE AVE	0
	SCOBLYONKO DAVID P	41 EAST WALL ST BETHLEHEM , PA 18018	92 SEASHORE AVE	0
	SCOBLYONKO DAVID P	41 E WALL ST BETHLEHAM , PA 18018	120 SEASHORE AVE	1
	SESTITO RUDOLPH A & ANNE C SESTITO LIFE INTEREST	203 ELM ST STOUGHTON , MA 02072	15 SPRUCE AVE	1

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	TANOUS DAVID J & MARY K JTS	20 SEASHORE AVE PEAKS ISLAND , ME 04108	20 SEASHORE AVE	1
	TRIMBEY ROGER S & CYNTHIA M MOLLUS JTS	14 RYEFIELD ST PEAKS ISLAND , ME 04108	14 RYEFIELD ST	1
	WARD BRUCE A & KATHLEEN J WARD JTS	40 VALLEY VIEW DR GORHAM , ME 04038	41 RYEFIELD ST	1
	WEINER LAWRENCE A ETAL	140 CABRINI BLVD # 34 NEW YORK , NY 10033	99 SEASHORE AVE	1
	WINTERBOTTOM LUCILLE N JOHN R & JOAN B	1386 CYPRESS WAY BOCA RATON, FL 33486	15 MAPLE ST	0

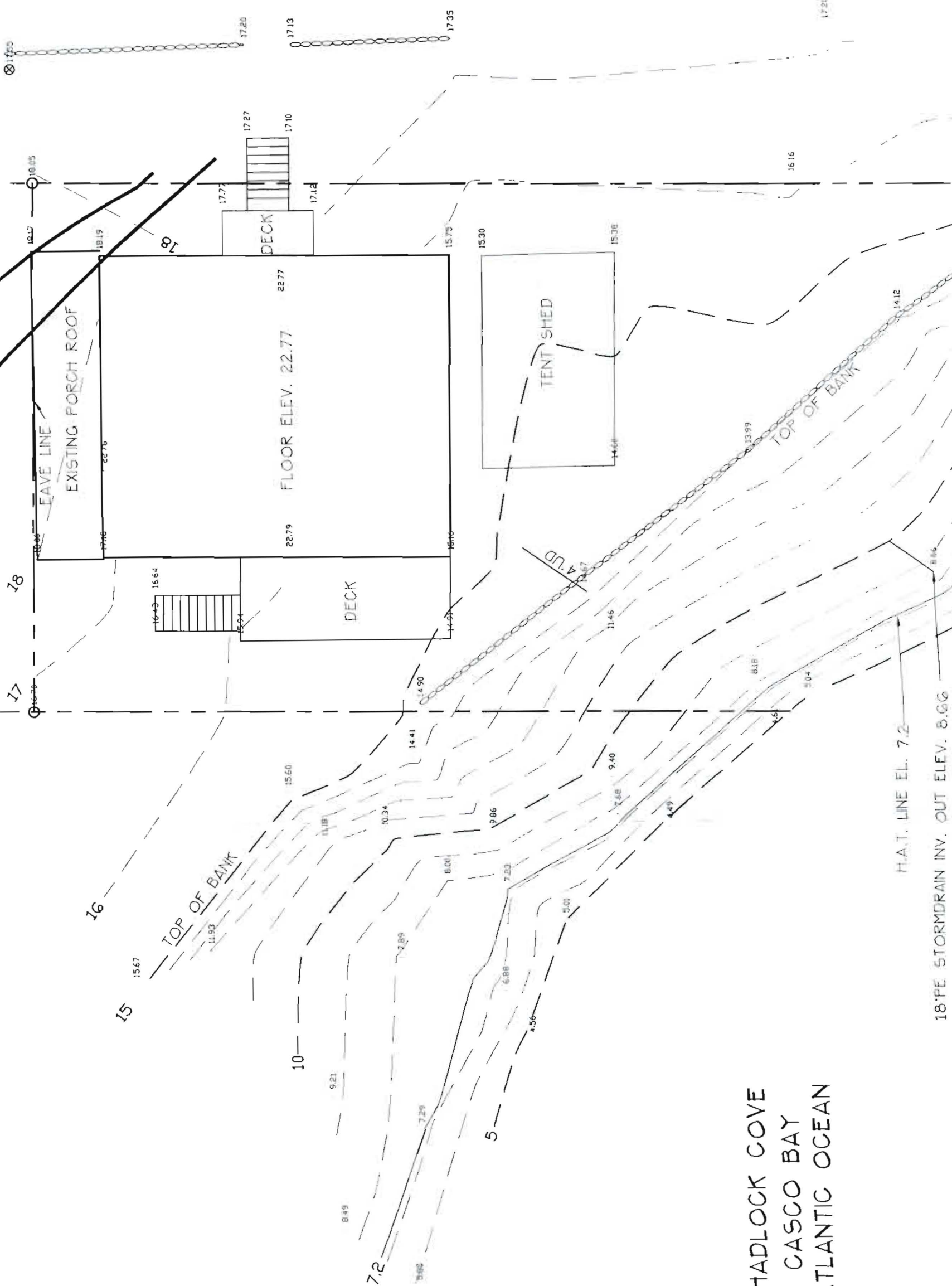


← TO SEASHORE AVE.

RYEFIELD STREET

MDER 75' SETBACK FROM HIGHEST ANNUAL TIDE ELEV. 7.2

75' SETBACK FROM MEAN HIGH TIDE ELEV. 4.88



HADLOCK COVE
CASCO BAY
ATLANTIC OCEAN

H.A.T. LINE EL. 7.2

18' PE STORMDRAIN INV. OUT ELEV. 8.66

3
18' FEET
N
SETBACK FROM HIGHEST ANNUAL TIDE ELEV. 7.2

75' SETBACK FROM MEAN HIGH TIDE ELEV. 4.88

20
PRESCRIPTIVE EASEMENT RIGHTS ARE CLAIMED BY PARCEL OWNER FOR THE AREA ADJACENT TO AND UNDERLYING STEPS

17
18
15
16
FEMA V2 ZONE BOUNDARY ELEVATION 23
TOP OF BANK

FEMA A0 ZONE BOUNDARY
FEMA V2 ZONE BOUNDARY
15
10
7.2
5

HADLOCK COVE
CASCO BAY
ATLANTIC OCEAN

18" PE STORM DRAIN
INV. OUT ELEV. 5.66
H.A.T. LINE EL. 7.2

LEGEND

- △ SURVEY CONTROL
- PIPE/PIN FOUND
- ⊗ WATER VALVE
- ▭ CATCH BASIN
- ⋯ STONEWALL

GRAPHIC SCALE
1 INCH = 10 FEET

