

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

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

March 5, 2010

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

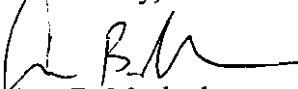
RE: 8 Ryefield Street, Peaks Island
CBL: 084 E005
ZONE: IR-2

Dear Mr. Goldberg:

Thank you for the copy of the recorded Certificate of Variance for 8 Ryefield Street, Peaks Island. We still have not received the final payment for the appeals. I have enclosed new invoices.

Please contact me if you have any questions.

Yours truly,



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

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

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

February 17, 2010

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

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

Dear Mr. Goldberg:

At the February 4, 2010 meeting, the Zoning Board of Appeals voted 5-0 to deny the Interpretation Appeal for the porch enclosure to be 50% glass, and the Board voted 4-1 to deny the Interpretation Appeal for the definition of a structure. The Board also voted 5-0 to approve the Variance Appeal for the rear deck. I have enclosed copies of the Board's decisions and the billing for the legal advertisement for the appeals.

I have also enclosed your Certificate of Variance Approval. **The original must be recorded in the Cumberland County Registry of Deeds within 90 days of February 11, 2010, when it was signed.** Failure to record the Certificate will result in it being voided. You must provide this office with a copy of the recorded certificate of Variance showing the recorded book and page.

The Variance Appeal for the deck was approved. Now you need to file an after the fact building permit for the deck and stairs. I have enclosed a building permit application. You have six months from the date of the hearing, February 4, 2010, referenced under section 14-473(e), to apply for the building permit, or your Zoning Board approval will expire.

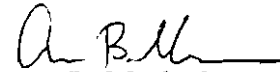
Since the Board did not approve your Interpretation Appeal for the definition of a structure and you withdrew the request for the Variance for the "tent shed", the "tent shed" needs to be removed. You have submitted a letter dated February 8, 2010 requesting that the owner have until April 30, 2010 to remove the tent shed. Our office feels that this is a reasonable request, so the owner has until that date to remove the tent

shed. An inspection is scheduled for May 3, 2010 to verify that the tent shed has been removed.

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.

Yours truly,

A handwritten signature in black ink, appearing to read "Ann B. Machado", with a horizontal line extending to the right.

Ann B. Machado
Zoning Specialist

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: February 5, 2010

RE: Action taken by the Zoning Board of Appeals on February 4, 2010.

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

Members Absent: Sara Moppin and Gordon Smith

1. Old 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: At the December 3, 2009 meeting, the Zoning Board of Appeals voted to grant the appellant a continuance to the February 4, 2010 meeting. 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 deny the interpretation appeal of the porch enclosure to be 50% glass. The Board voted 4-1 to deny the interpretation appeal of the definition of a structure.**

B. Variance Appeal:

8 Ryefield Street, Peaks Island, Philip H. Morgan, owner, Tax Map 084, Block E, Lot 005, IR-2 Island Residential Zone: At the December 3, 2009 meeting, the Zoning Board of Appeals voted to grant the appellant a continuance to the February 4, 2010 meeting. 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 the variance appeal for the deck. The applicant withdrew the request for the variance for the "tent shed".**

Enclosure:

Agenda of January 7, 2010

Original Zoning Board Decision

One dvd

CC: Joseph Gray, City Manager

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

Alex Jaegerman, Planning Division

T.J. Martzial, Housing & Neighborhood Services Division



COPY

CITY OF PORTLAND

CERTIFICATE OF VARIANCE APPROVAL


I, Philip Saucier, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 4th day of February, 2010, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.

1. **Current Property Owner: Philip H. Morgan**
2. **Property: 8 Ryefield Street, Peaks Island, Portland, ME CBL: 084-E-005**
Cumberland County Registry of Deeds, Book: 18062 Page: 345
Last recorded deed in chain of Title: 9/10/2002

3. **Variance and Conditions of Variance:**

To grant relief from section 14-145.11(c)(3) of the Land Use Zoning Ordinance to allow an approximate 11.5' right side yard setback instead of the required 20' side yard setback, and to grant relief from section 14-145.11(c)(2) to allow an approximate 6'8" rear yard setback instead of the required 25' rear yard setback, and to grant relief from section 14-145.11(d) allowing a 38.4% lot coverage instead of the maximum allowed 20% lot coverage.

IN WITNESS WHEREOF, I have hereto set my hand and seal this day of February, 2010


_____, Chair of
City of Portland Zoning Board,
Philip Saucier (Printed or Typed Name)

STATE OF MAINE
Cumberland, ss.

Then personally appeared the above-named Philip Saucier and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on 2/11, 2010.

KATE E. HATCH
Notary Public, Maine
My Commission Expires August 2, 2012


(Printed or Typed Name)
Notary Public

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

Received
Recorded Register of Deeds
Feb 22, 2010 10:23:49A
Cumberland County
Pamela E. Lovley

SEAL

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

"Undue Hardship" Variance Appeal Morgan Deck

DECISION

Date of public hearing: February 4, 2010

Name and address of applicant: Philip Morgan
30 Barkley Ave.
Auburn, ME 14210

Location of property under appeal: 8 Ryefield St.
Peaks Island

For the Record:

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

Applicant + Attorney Goldberg

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

See application- nothing further submitted

Findings of Fact and Conclusions of Law:

The applicant is requesting an "undue hardship" variance from the Setback and lot coverage standards of the IR-2 zone for a rear deck and steps that were constructed sometime after 1981. Specifically, the applicant is seeking a variance for the right side setback from a required 20' to 11.5'; a variance for the rear side setback from a required 25' to 6'8"; a variance for the maximum allowable lot coverage from 20% of the lot to 38.4% of the lot; and a variance from the shoreland zone setback from the required 75' to 26'6".

Section 14-145.11(c)(2) of the City Code requires a minimum rear setback of 25'. The deck is located approximately 6'8" from the rear property line. Section 14-145.11(c)(3) requires a minimum side yard setback of 20'. The deck stairs are located approximately 11.5' from the side property line. Section 14-145.11(d) requires a maximum lot coverage of 20%. Whereas the lot is 3,393 square feet, the maximum lot coverage is 678.6 square feet. The applicant is requesting a variance to allow 38.4% lot coverage. Section 14-449(a) requires a minimum setback of 75' from the high water line for all structures located within the shoreland zone. The deck is located approximately 26.5' from the high water line.

The deck does not appear on the pre-1957 or the 1981 assessor's cards. There is no record of a permit being issued for the construction of the deck.

"Undue Hardship" Variance standard pursuant to Portland City Code §14-473(c)(1):

1. The land in question cannot yield a reasonable return unless a variance is granted. (Note: "Failure to yield a 'reasonable return' means 'the practical loss of all beneficial use of the land.' . . . Reasonable return does not mean maximum return." *Rowe v. City of South Portland*, 730 A.2d 673, 675 (Me. 1999) (citations omitted).)

Satisfied ☒ Not Satisfied ☐

Reason and supporting facts:

Applicant's family purchased property, w/ presumably assessed value w/ deck - there would not be fair return in future

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied X Not Satisfied

Reason and supporting facts:

Small lot
long history since deck built
(owner unaware of non-conformity)

3. The granting of a variance will not alter the essential character of the locality.

Satisfied X Not Satisfied

Reason and supporting facts:

All local homes on ocean have these

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied ☒ Not Satisfied ☐

Reason and supporting facts:

4 owners previous owners, also Board believes
this denied refers to self-created harm by either owner or
previous owner.

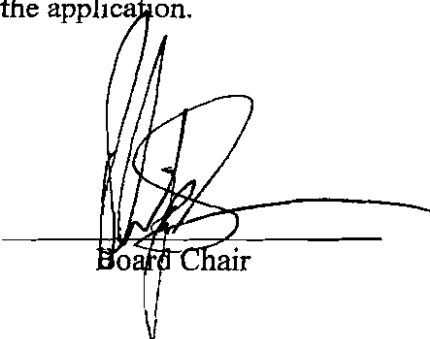
Conclusion: (check one)

☒ Option 1: The Board finds that the standards described above (1 through 4) have been satisfied and therefore GRANTS the application.

☐ Option 2: The Board finds that while the standards described above (1 through 4) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

☐ Option 3: The Board finds that the standards described above (1 through 4) have NOT all been satisfied and therefore DENIES the application.

Dated: 2-4-10


Board Chair

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

**"Undue Hardship" Variance Appeal
Morgan Tent Shed**

DECISION

Date of public hearing: February 4, 2010


Name and address of applicant: Philip Morgan
30 Barkley Ave.
Auburn, ME 14210

Location of property under appeal: 8 Ryefield St.
Peaks Island

For the Record:

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

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

WITHDRAWN
BY
APPLICANT
2/4/10

Chair

Findings of Fact and Conclusions of Law:

The applicant is requesting an “undue hardship” variance from the Setback and lot coverage standards of the IR-2 zone for a tent shed that was erected sometime after 1981. Specifically, the applicant is seeking a variance for the front yard setback from a required 16.5’ to 5’; a variance for the rear side setback from a required 25’ to 23’; a variance for the maximum allowable lot coverage from 20% of the lot to 38.4% of the lot; and a variance from the shoreland zone setback from the required 75’.

Section 14-145.11(c)(2) of the City Code requires a minimum rear setback of 25’. The tent shed is located approximately 23’ from the rear property line. Section 14-145.11(c)(3) requires a minimum front yard setback of twenty-five (25) feet except that a front yard need not exceed the average depth of front yards on either side of the lot, which for this property would be 16.5’. The tent is located approximately 5’ from the front property line. Section 14-145.11(d) requires a maximum lot coverage of 20%. Whereas the lot is 3,393 square feet, the maximum lot coverage is 678.6 square feet. The applicant is requesting a variance to allow 38.4% lot coverage. Section 14-449(a) requires a minimum setback of 75’ from the high water line for all structures located within the shoreland zone. The tent shed is located within 75’ of the high water line.

The tent shed does not appear on the pre-1957 or the 1981 assessor’s cards. There is no record of a permit being issued for the tent shed.

“Undue Hardship” Variance standard pursuant to Portland City Code §14-473(c)(1):

1. The land in question cannot yield a reasonable return unless a variance is granted. (Note: “Failure to yield a ‘reasonable return’ means ‘the practical loss of all beneficial use of the land.’ . . . Reasonable return does not mean maximum return.” *Rowe v. City of South Portland*, 730 A.2d 673, 675 (Me. 1999) (citations omitted).)

Satisfied _____ Not Satisfied _____

Reason and supporting facts:

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied _____ Not Satisfied _____

Reason and supporting facts:

3. The granting of a variance will not alter the essential character of the locality.

Satisfied _____ Not Satisfied _____

Reason and supporting facts:

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied _____ Not Satisfied _____

Reason and supporting facts:

Conclusion: (check one)

____ Option 1: The Board finds that the standards described above (1 through 4) have been satisfied and therefore GRANTS the application.

____ Option 2: The Board finds that while the standards described above (1 through 4) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

____ Option 3: The Board finds that the standards described above (1 through 4) have NOT all been satisfied and therefore DENIES the application.

Dated:

Board Chair

Members present: Phil Saucier - Trish McAllister - Jill Hunter - William

CITY OF PORTLAND, MAINE

Getz
Peter Coyne

ZONING BOARD OF APPEALS

Members Absent: Sara Moppin - Gordon Smith

APPEAL AGENDA

Called to order AT 6:30 pm

The Board of Appeals will hold a public hearing on Thursday, February 4, 2010 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

Denied

1. Old 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: At the December 3, 2009 meeting, the Zoning Board of Appeals voted to grant the appellant a continuance to the February 4, 2010 meeting.

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.

B. Variance Appeal:

8 Ryefield Street, Peaks Island, Philip H. Morgan, owner, Tax Map 084, Block E, Lot 005, IR-2 Island Residential Zone: At the December 3, 2009 meeting, the Zoning Board of Appeals voted to grant the appellant a continuance to the February 4, 2010 meeting.

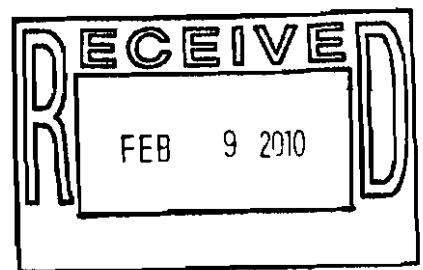
The appellant is seeking a variance to keep the 8' x 20' deck and steps that were built without a permit. The appellant is requesting a variance for the right side setback from a required 20' to 11.5' [section 14-145.11(c)(3)] and for the rear setback from a required 25' to 6'8" [section 14-145.11(c)(2)]. 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.

2. Adjournment:

7:45 pm

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

DIRECT DIAL 207 699.5735
RECEPTION 207 775-3101
FAX 207 871-0683

jgoldberg@mittelasen.com

February 08, 2010

Ann Machado
City of Portland
389 Congress Street
Portland, ME 04101-3509

Re: **8 Ryefield Avenue, Peaks Island
Philip Morgan**

Dear Ann:

At its February 4, 2010 meeting, the Zoning Board of Appeals (the "Board") granted variances that allow the property owner to keep and maintain the 8' X 20' deck on the west side of the house. The Board denied our interpretation appeals relative to the enclosure of the porch on the north side of the house and the "tent shed" on the south side of the house.

In discussion with Marge Schmuckal at the close of the meeting, I inquired about the length of time the City would allow the tent shed to remain in place. She suggested that I propose some date by which the owner would remove the tent shed.

I proposed—and now make that proposal in writing—that the City refrain from taking enforcement action relative to the tent shed until May 1, 2010, thereby giving the property owner through April 30, 2010 to make arrangements for removal of the "structure" and to find alternative protection from the elements for the antique car that is within it. Marge seemed to agree that it was reasonable to allow time for the snow to disappear before requiring removal. She agreed further that there is some likelihood of fresh snow in early April, so that an April 30 deadline for removal was not unreasonable.

RECEIVED

FEB 11 2010

Dept. of Building Inspections
City of Portland Maine

Ann Machado
February 08, 2010
Page 2 of 2

I will await your decision. Thanks in advance for your due consideration of this request.

Regards,

Jonathan L. Goldberg

cc: Philip Morgan
Marge Schmuckal

F:\Client List\JLG\Morgan, Phil\10 02 08 Machado Letter.Doc

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



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

RECEIVED

FEB 11 2010

Dept. of Building Inspections
City of Portland Maine

Ann Machado
City of Portland
389 Congress Street
Portland, ME 04101-3509

04101+3509



Memo

To: Members of the Zoning Board of Appeals
From: Danielle P. West-Chuhta, Associate Corporation Counsel
Date: February 3, 2010
Re: **Philip H. Morgan/8 Ryefield Street, Peaks Island Appeal**

Position of the City of Portland (the "City") in Support of the Zoning Administrator's interpretation of the City of Portland Land Use Code (the "Code") with regard to Philip H. Morgan/8 Ryefield Street, Peaks Island.

Interpretation Appeal

The applicant (Philip H. Morgan) contends that the City's interpretation of section 14-427 is incorrect and should be overturned. He further asserts that the Board should empathize with his situation and grant him a reduction in the setback from twenty (20) feet to zero (0) feet. These are assertions are unconvincing and should fail.

Zoning ordinances need to be reviewed such that "[t]he terms or expressions [contained therein] are construed reasonably with regard to both the objects sought to be obtained and to the general structure of the ordinance as a whole. Undefined terms should be given their common and generally accepted meaning unless the context clearly indicates otherwise. Applying these principles, we find the plaintiff's assertions to be without merit." George D. Ballard, Builder, Inc. v. City of Westbrook, 502 A.2d 476, 480 (Me. 1985) (citations omitted) (holding that the term approval "is not vague on its face . . ." and that the common and generally accepted meaning of the term should be used in defining what the term means.)

In order to determine the purpose of the ordinance provision the Board must interpret each section to be in harmony with the overall scheme envisioned by the municipality when it enacted the ordinance. See Natale v. Kennebunkport Board of Zoning Appeals, 363 A.2d 1372, 1374 (Me. 1976). The assumption is that the drafter would not have included a provision that clearly was inconsistent with the rest of the ordinance. See id.

Here, section 14-427 provides that "[a]ny 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."

This section is not vague or ambiguous. It clearly provides that an open porch with a roof (existing since 1957) that encroaches into the setbacks may be enclosed if the major portion of the enclosure is glass. The term "major" is not defined in the Code, but is generally defined as and has been interpreted by the City to mean more than 50% of

the proposed enclosure must be glass.¹ As such, using the concepts outlined above, the Board should find that the enclosure must be more than 50% glass, as required by the Zoning Administrator.

Next, the applicant also unconvincingly argues that his tent/shed is not a structure as defined under the Code. Section 14-47 defines a structure as “[a]nything constructed or *erected* of more than one (1) member which requires a fixed location on the ground . . .” (emphasis added). In this case, the tent/shed is erected, has more than one (1) member² (it has the poles to hold it up, and the material over it to cover the poles and the stakes in the ground), and it will be fixed to the ground with stakes. Therefore, it is clearly a structure under the plain terms of section 14-47 of the Code.

Overall, the applicant has failed to establish that the Zoning Administrator’s interpretation is incorrect and his interpretation appeal should fail.

Hardship Variance

Finally, the applicant contends that it is entitled to a hardship variance for the deck, stairs and tent/shed that the Zoning Administrator has ordered removed from the property.

Title 30-A M.R.S. section 4353 and section 14-473(c)(1) of the Code provide that “a variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words undue hardship as used in this subsection mean:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. That the granting of a variance will not alter the essential character of the locality; **and**
- d. That the hardship is not the result of action taken by the applicant or a prior owner.

a. The Property can Yield a Reasonable Return

First, it is essential for the applicant to establish that the property cannot yield a reasonable return unless a variance is granted. This requirement is impossible for the applicant to meet in this case.

¹ Major is defined as “[g]reater in number, quantity, or extent . . . having attained majority . . .” Merriam-Webster Dictionary, <http://www.merriam-webster.com>.

² A structural member is defined as “support that is a constituent part of any structure or building . . .” See <http://www.thefreedictionary.com>.

The Maine Law Court has held that a reasonable return does not mean the landowner is entitled to a maximum return on the property. See Barnard v. Town of Yarmouth, 313 A.2d 741, 748-49 (Me. 1974). Instead, the Court has made clear that undue hardship only exists where strict application of the ordinance would result in the practical loss of all beneficial use of the property. See Thornton v. Lothridge, 447 A.2d 473, 475 (Me. 1982) (citations omitted); Twigg v. Town of Kennebunk, 662 A.2d 914 (Me. 1995).

In this case, the property in question does not have to have a deck, stairs and tent/shed in order to yield a reasonable return. Such items are nice to have on your property, but are not required or necessary to yield a reasonable return.

In addition, even though the applicant may want to use the property in this specific manner (i.e. with a deck, stairs and tent/shed) and may only see value in the property when it is being used in that manner, the Law Court has repeatedly made clear that a variance is unwarranted if it will merely increase the value or convenience of the property or if the alleged hardship is due to the circumstances of the applicant and not the property. See Brooks v. Cumberland Farms, Inc., 1997 ME 203, 703 A.2d 844, 848-49 (overturning a variance needed to modernize a convenience store's gasoline sales area, even though, without it, the business would be unprofitable, where the evidence showed that there were numerous other lawful uses available without the need for a variance); Forester v. City of Westbrook, 604 A.2d 31 (Me. 1992); Goldstein v. City of South Portland, 1999 ME 66, 728 A.2d 165; Lippoth v. Zoning Board of Appeals, City of South Portland, 311 A.2d 552 (Me. 1973).

b. Issue not Unique to the Property

With regard to the second prong of the aforementioned test, an undue hardship exists only if the problem is unique to the property of the applicant.

Here, the applicant contends that the issue is unique because "[t]he 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[,] and all of the lot is within the shoreland zone. See Attachment to Variance Appeal Application submitted by Philip H. Morgan at p. 1. In Sibley v. Inhabitants of Town of Wells, 462 A.2d 27 (Me. 1983) the Law Court, however, held that "the mere fact that the lot was substandard was not a unique circumstance justifying grant of a zoning variance . . ."

Moreover, the applicant's property is not unique since several lots that abut his property are also located within the shoreland zone. Consequently, the alleged hardship suffered is not unique to the property.

c./d. Use Inconsistent With Essential Character of the Locality/Hardship the Result of Actions Take by the Applicant

Finally, although the use of the applicant's property may not alter the essential character of the neighborhood it is located within, the alleged hardship is the result of actions taken by the applicant so his request must be denied.

More specifically, the alleged hardship is self created given the fact that the property was purchased with the presumed knowledge (actual or constructive) of the City's zoning restrictions and the permits granted or not granted for the property in question. See Twigg, 662 A. 2d at 914 (holding that even though actual or presumed knowledge of the municipality's existing zoning requirements does not mean that the board must deny the variance application, it is part of the evidence which the Board must consider in deciding whether there is self-created hardship).

Furthermore, since the applicant's predecessor in title committed a violation of a Code requirement (in this case the construction of the deck and stairs without a permit), and the applicant now seeks a variance after-the-fact, such a request is a self-created hardship.

In sum, as set forth above, the applicant is unable to meet its burden of establishing each and every part of the aforementioned four-part test. See Sibley, 462 A.2d at 30 (holding that "The burden was on the Sibleys to prove at the agency level that they met all of these statutory requirements.") The Board must therefore deny the applicant's variance appeal application.



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

9.5
9.5

$$\begin{aligned} 32 \times 18 &= \\ 6 \times 18 &= \end{aligned}$$

A Harvest #2

FLOOR CONST.

FOUNDATION		FLOOR CONST.		PLUMBING	
CONCRETE		WOOD JOIST		BATHROOM	
CONCRETE BLOCK		STEEL JOIST		TOILET ROOM	
BRICK OR STONE		MILL TYPE		WATER CLOSET	
PIERS	✓	REIN. CONCRETE		LAVATORY	
CELLAR AREA FULL	✓	FLOOR FINISH		KITCHEN SINK	✓
1/4 3/4 1/2		B 1 2 3		STD. WAT. HEAT	
NO. CELLAR		CEMENT		AUTO. WAT. HEAT	
EXTERIOR WALLS		EARTH	✓	ELECT. WAT. SYST.	
CLAPBOARDS	✓	PINE	✓✓	LAUNDRY TUBS	
WIDE SIDING		HARDWOOD		NO PLUMBING	
DROP SIDING		TERRAZZO			
NO SHEATHING		TILE		TILING	
WOOD SHINGLES				BATH FL. & WCOT.	
ASBES. SHINGLES				TOILET FL. & WCOT.	
STUCCO ON FRAME		ATTIC FLR. & STAIRS		LIGHTING	
STUCCO ON TILE		INTERIOR FINISH		ELECTRIC	✓
BRICK VENEER		B 1 2 3		NO LIGHTING	
BRICK ON TILE		PINE	✓✓	NO. OF ROOMS	
SOLID BRICK		HARDWOOD		BSMT. 2ND	
STONE VENEER		PLASTER		1ST 3RD	
CONC. OR CIND. BL.		UNFINISHED	✓✓	OCCUPANCY	
		METAL CLG.		SINGLE FAMILY	
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			
METAL		NO HEATING	✓	ECONOMIC CLASS	
COMPOSITION				OVER BUILT	
ROLL ROOFING		GAS BURNER		UNDER BUILT	
		OIL BURNER		Dr. 8-10-50	AR. 20
INSULATION		STOKER		LB. 12	PD. 30
				MS. 12	CK. 3

UNIT	1951		
525 S. F.	1950		
S. F.			
ADDITIONS	+1530		
F.D.T.	-140		
BASEMENT	+250		
WALLS			
ROOF			
1 1/2 Bay	+30		
FLOORS	-20		
ATTIC			
FINISH	-580		
FIREPLACE			
HEATING			
PLUMBING	+210		
TILING			
TOTAL	2170		
FACT. HO	200		
RFP. VAL.	13.70		

Attachment #2

SUMMARY OF BUILDINGS

DCC Y	TYPE	GR.	AGE	REMOD.	COND.	REP. VAL.	P. D.	PHY. VAL.	F. D.	SOUND VAL.	TAX VAL.
Collage	A 20/Kr	DC			P	2370	55%	1070	A	1070	650
	B								B		
	C								C		
	D								D		
	E								E		
	F								F		
	G								G		
YEAR	1951							1951 TOTAL BLOGS:		1070	650
TAX VAL.							19			19	
OLD VAL.	650						19			19	
CHANGE							19			19	

Attachment #4

Integration Apped Window area to wall area based on

also 0.9 subm. that.

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

$$6 \times 8.33 = 49.98 \text{ s.f.}$$

$$\text{Window area} - 46'' \times 56'' = 2576 \text{ s. inches}$$

$$= 17.89 \text{ s.f.}$$

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

Side wall:

$$\text{Wall area} - 38' \times 8' 4''$$

$$- 24 \times 8.33 = 203.24 \text{ s.f.}$$

$$\text{Window area} - 18'' \times 246'' = 4428 \text{ s. inches}$$

$$= 6 \text{ s.f.}$$

$$- 2 \text{ window} = 12 \text{ s.f.}$$

$$\text{door area} - 32'' \times 80'' = 2560 \text{ s. inches}$$

$$= 17.78 \text{ s.f.}$$

$$\text{Total area} = 29.78 \text{ s.f.}$$

* Windows: door cover 12.7% of wall (29.78/233.04)

Back wall: wall area 6' x 8' 4"

$$6 \times 8.33 = 49.98 \text{ s.f.}$$

$$\text{Window} 42'' \times 56'' = 2352 \text{ s. inches}$$

$$= 11.33 \text{ s.f.}$$

* Window covers 32.67% of wall area (16.33/49.98)
* Total percent window to wall is 19.2% (6.4/33.32)

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

DWELLING DATA (EST)

CONSTRUCTION
 2.0 STORY

1 BRICK 4 CONC. BLK 7 STONE
 2 FRAME 5 STUCCO 8
 2 SPLIT-LEVEL 3 FR & MAS. 6

AGE _____

ERECTED 19 _____

REMODELED 19 _____

LIVING ACCOMMODATIONS

TOTAL ROOMS _____ BED ROOMS _____ FAMILY ROOMS _____

FULL BATHS _____ HALF BATHS _____ TOTAL FIXTURES 25

FOUNDATION

CONCRETE _____ BASEMENT & ATTIC _____

NO BLOCK WALLS _____ FIN BSMT AREA _____

ICK STONE WALLS _____ HEAD ROOM _____

IRS SLAB/CRWL _____ GARAGE S O _____

SEMENT FULL _____ ATTIC FL & STR _____

0 1 4 1/2 3/4 _____ FINISHED ATTIC _____

DORMER _____ L/F _____

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

FLOORS

CONCRETE _____

RTH _____

IE _____

RD/WOOD _____

PH TILE _____

3FFT _____

OTES:

OWNER _____

TENANT _____

NO ANSWER _____

INSPECTED _____

REFUSED ENTRY _____

INTO @DOOR _____

REFUSED INFO _____

OCCUPANCY

SINGLE FAMILY _____

TWO FAMILY _____

APARTMENT _____

NO. UNITS _____

OTHER _____

COTTAGE _____

UNFIN. _____

FIN. OPEN _____

FIN. DIV. _____

PLUMBING M D

BATHROOM _____

TOILET ROOM _____

FLUSH _____

LAVATORY _____

SHOWER - EXTRA _____

KITCHEN SINK _____

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

FLOORS

CONCRETE _____

RTH _____

IE _____

RD/WOOD _____

PH TILE _____

3FFT _____

OTES:

OWNER _____

TENANT _____

NO ANSWER _____

INSPECTED _____

REFUSED ENTRY _____

INTO @DOOR _____

REFUSED INFO _____

GROUND FLOOR AREA

ADDITION POINTS _____

GRADE FACTOR $\frac{1}{2} \times 100\%$

C & D FACTOR $\frac{1}{2} \times 100\%$

CDU $\frac{1}{2}$ DEPRECIATION _____

DWELLING COMPUTATIONS

19 19 19 19

BASE PRICE 18,850

PLUMBING 2,500

BASEMENT 8,530

ATTIC 1,870

ADDITIONS 5,140

DORMERS _____

TOTAL BASE 36,890

GRADE FACTOR 110

TOTAL 40,580

OTHER FEATURES _____

TOTAL 40,580

C & D FACTOR _____

REPL COST 40,580

DEPREC 30/10

RCLD 25,570

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

FLOORS

CONCRETE _____

RTH _____

IE _____

RD/WOOD _____

PH TILE _____

3FFT _____

OTES:

OWNER _____

TENANT _____

NO ANSWER _____

INSPECTED _____

REFUSED ENTRY _____

INTO @DOOR _____

REFUSED INFO _____

OTHER FEATURES

MASONRY TWIN _____

MODERNIZED KITCHEN _____

RECREATION ROOM _____

WOODBURNING FIREPLACE _____

BASEMENT GARAGE _____

ATTACHED GARAGE _____

TOTAL OTHER FEATURE POINTS _____

DWELLING COMPUTATIONS

19 19 19 19

BASE PRICE 18,850

PLUMBING 2,500

BASEMENT 8,530

ATTIC 1,870

ADDITIONS 5,140

DORMERS _____

TOTAL BASE 36,890

GRADE FACTOR 110

TOTAL 40,580

OTHER FEATURES _____

TOTAL 40,580

C & D FACTOR _____

REPL COST 40,580

DEPREC 30/10

RCLD 25,570

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

EXTERIOR WALLS

100 VINYL ALUM _____

INGLES WOOD _____

INGLES ASPHALT _____

INGLES ASBESTOS _____

ICK VENEER _____

SNKET INSULATION _____

OF INSULATION _____

ROOFING

INGLES ASPHALT _____

INGLES WOOD _____

INGLES ASBESTOS _____

ATE _____

L _____

FLOORS

CONCRETE _____

RTH _____

IE _____

RD/WOOD _____

PH TILE _____

3FFT _____

OTES:

OWNER _____

TENANT _____

NO ANSWER _____

INSPECTED _____

REFUSED ENTRY _____

INTO @DOOR _____

REFUSED INFO _____

OTHER BUILDINGS AND YARD

NO. TYPE SIZE GRADE RATE REPL COST DEPR. RCLD. TYPE CODE

01 GARAGE

02 CARPORT

03 PATIO

04 SHED

05 POOL

06 BARN

NOTES: 7x24

81-011 10 11:11 1/2 FR

1981 assessor's card

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: [REDACTED] 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.**

Re: [REDACTED] al:

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 5-6 to grant a continuance to~~

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.**



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.

NOV 17 2009

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

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

Signature of Applicant

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

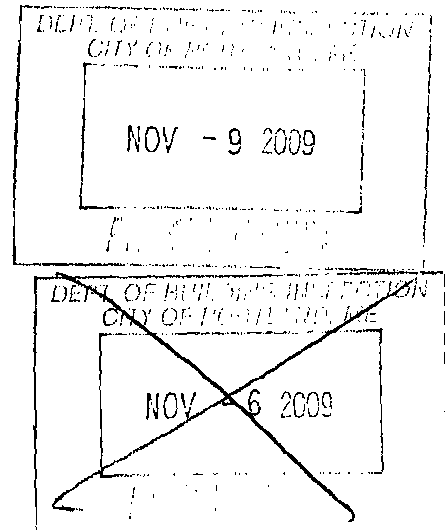
PHONE 207 775-3101
FAX 207 871-0683

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.

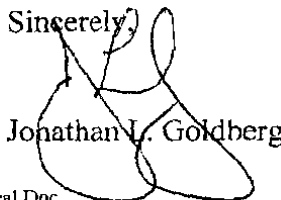
The deck and stairs provide for entry to and exit from the rear of the dwelling. They have been in place since before 1995 when Mr. Morgan's family purchased the property from the mortgagee foreclosing upon the previous owner. Please see attached deed from P. J. Currier Lumber Co., Inc. to Philip H. 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.

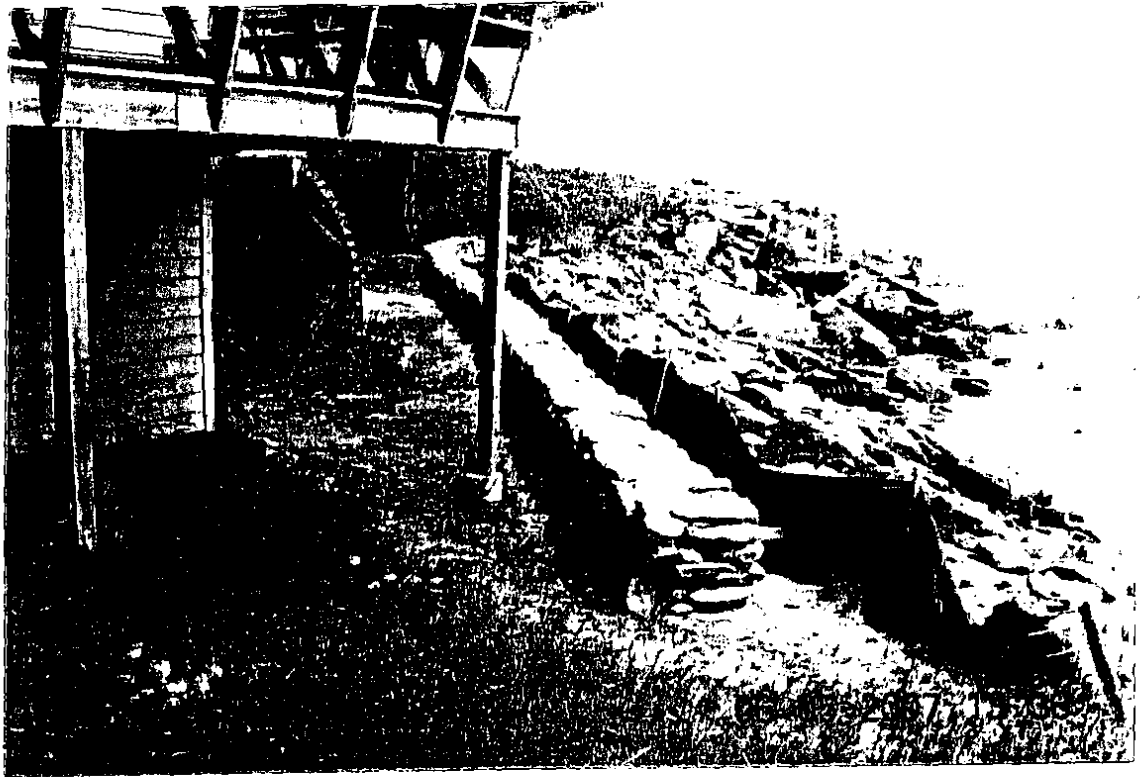
It is noteworthy that the subject lot is extremely small (somewhere between 3393 square feet and 4875 square feet). The minimum lot size is 20,000 square feet in this IR-2 zone. Moreover, virtually all of the lot is within the shoreland zone, leaving the owner no options to modify the dwelling to increase 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\ULG\Morgan, Phil\09 05 18 ZBA Letter For Interpretation Appeal.Doc





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, 1998

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

SUNDERLAND COUNTY

John B. O'Brien

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. Louvi
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 H. Morgan and acknowledged the foregoing to be his free act and deed.

Before me,

Mariel D. Laurie
Notary Public/Attorney-at-Law

SEAL

MARIE L. LAURIE
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

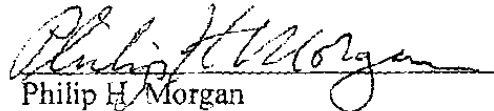
Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland , ME 04101

**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

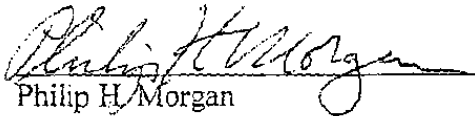
Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

*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.

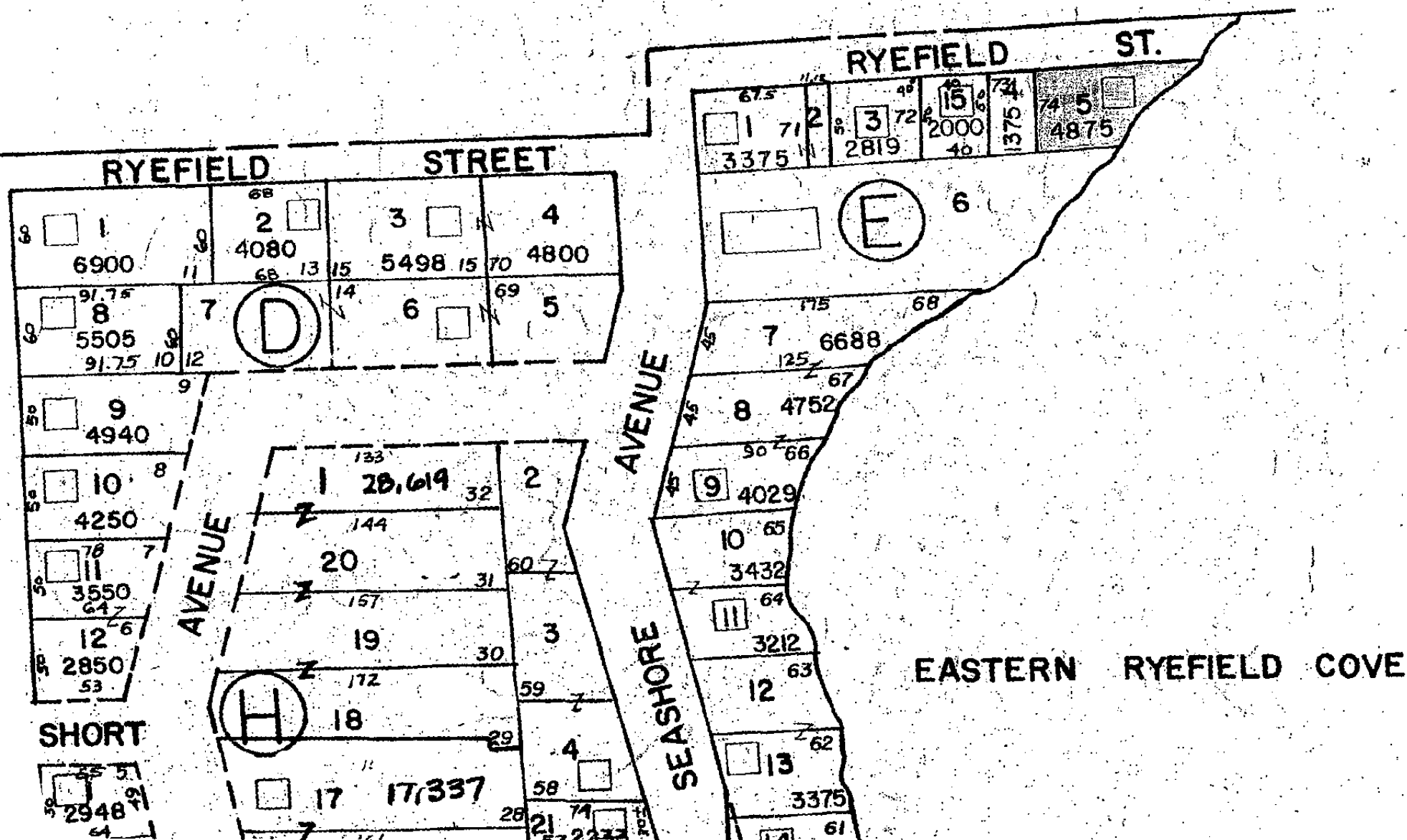
You may contact our office for the necessary paper work if you decide to file an appeal.

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



CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT

389 Congress Street
Portland, Maine 04101

Application No: 09-59700002

Statement Date: 03/05/2010

Project Name: 8 Ryefield

Applicant: Philip Morgan

Development Type: ZONING INTERPRETATION APPEAL

CBL: 084 - E-005-001 8 RYEFIELD ST

SUMMARY OF OUTSTANDING FEES

	Charge Amount	Paid	Due
LEGAL AD ZONING BOARD	\$196.11	\$85.43	\$110.68
NOTICING ZONING BOARD	\$21.00	\$21.00	\$0.00
ZONING BOARD OF APPEALS	\$100.00	\$100.00	\$0.00
ZONING PROCESSING FEE	\$50.00	\$50.00	\$0.00
Outstanding Charges	\$367.11	\$256.43	\$110.68

Detach and remit with payment

Application No: 09-59700002

Project Name: 8 Ryefield

Total Due Now \$110.68

Amount Remitted _____

Philip Morgan
30 Barkley Avenue
Auburn, ME
Auburn, ME 04210

Make checks payable to the *City of Portland*, ATTN: Gayle Gurtin, 3rd Floor, 389 Congress Street, Portland, ME 04101.

S Project Master Inquiry (P7N2001001)

File Edit Commands Help

BLINDARD/PUBLIC SECTOR

NavLine



* Project 09-59400001

- ☐ Bonds
- ☐ Conditions
- ☐ Documents
- ☒ Fees
- ☐ Key dates
- ☐ Locations
- ☐ Notice letters
- ☐ Project data
- ☐ Project names
- ☐ Project text
- ☐ Receipts
- ☐ Reviews
- ☐ Review steps
- ☐ Active review action
- ☐ Active review agent

Project General Information

Project description: VARIANCE APPEAL - 8 RYEFIELD STREET, PEAKS ISLAND
 Project type: ZONING USE VARIANCE ZUV
 Project Title: 8 RYEFIELD
 Applicant: PHILIP MORGAN
 Project status: APPROVED AP
 PIN number: 5367
 Application date: 11/13/2009
 Planner assigned: ANN MACHADO ABM
 Accounting project:
 Dwelling units: 0
 Total square footage: 0
 Building Permits notify: NONE
 Permit process:

Type	Description	Charged	Credited	Paid	Balance Due
actions					
	LEGAL AD ZONING BOARD	196.10	.00	196.10	.00
	NOTICING ZONING BOARD	21.00	.00	21.00	.00
	ZONING BOARD OF APPEALS	100.00	.00	100.00	.00
Is		317.10	.00	317.10	.00

Print

Cancel

Exit

Refresh

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, Peaks Island

Location: 8 Ryefield Street, Peaks Island

CBL: 084 E005

Application Type: Variance Appeal

Current Fees: \$317.10 - **Current Payments:** \$206.43 = **Total Due:** \$110.67 (due on receipt)

<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisements	2	\$196.10
Notices	28	\$21
Processing Fee	1	\$0
Zoning Conditional Use	1	\$100

Total Current Fees: \$317.10

Total Current Payments: -\$206.43

Amount Due Now: \$110.67

Bill to:

CBL: 084 E005

Application No: 59400001

Jonathan Goldberg

Invoice Date: 01/25/10

Total Amount Due: \$110.67

PO Box 427

Portland, ME 04101

City of Portland
DATE: 3/15/10
TIME: 11:19:02

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		110.67
		TOTAL AMOUNT:	110.67

3776

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

Gorham
FARM & GARDEN

52-7457-2112

3/8/2010

PAY TO THE
ORDER OF: City of Portland

\$ **221.35

Two Hundred Twenty-One and 35/100*****

DOLLARS

City of Portland

MEMO

Application # 59700002,59400001

AUTHORIZED SIGNATURE

⑈003776⑈ ⑆211274573⑆ 610 000644⑆⑈

Bill to:

Jonathan Goldberg

PO Box 427

Portland, ME 04101

CBL: 084 E005

Invoice Date: 01/25/10

Application No: 59400001

Total Amount Due: \$110.67

Bill to:

Jonathan Goldberg

PO Box 427

Portland, ME 04101

CBL: 084 E005

Invoice Date: 01/25/10

Application No: 59700002

Total Amount Due: \$110.68

From: Joan Jensen <jjensen@pressherald.com>
To: AMACHADO@portlandmaine.gov
Date: 1/25/2010 12:03 PM
Subject: Re: Zoning Board of Appeals Legal Ad

Hi Ann,

All set to publish your ad on Friday, January 29.
The cost is \$221.35.
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 is the Zoning Board of Appeals legal ad for Friday, January
> 29, 2010.
>
> Thank you.
>
> Ann Machado
> 874.8709



City of Portland Zoning Board of Appeals

January 25, 2010

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

Dear Mr. Goldberg,

Your Interpretation and Variance Appeals have been scheduled to be heard before the Zoning Board of Appeals on **Thursday, February 4, 2010 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring copies 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 bills for the second Legal Ad for both appeals. 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

Ann Machado - RE: February 4, Appeal

From: "Jonathan Goldberg" <JGoldberg@mittelasen.com>
To: "Ann Machado" <AMACHADO@portlandmaine.gov>
Date: 1/25/2010 11:31 AM
Subject: RE: February 4, Appeal

Yes – We intend to make our appeals (interpretation and variance) before the ZBA on February 4, 2010.

Thanks,

Jon

From: Ann Machado [mailto:AMACHADO@portlandmaine.gov]
Sent: Monday, January 25, 2010 11:28 AM
To: Jonathan Goldberg
Subject: February 4, Appeal

Jon -

Just making sure that we are on for the February 4, 2010 ZBA meeting for the two Morgan appeals (interpretation and variance).

Thanks.

Ann Machado
Zoning Specialist
207.874.8709

MITTEL ASEN, LLC

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

DEC - 1 2009

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

December 1, 2009

VIA EMAIL: amachado@portlandmaine.gov

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:

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.

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	ADAMS SHIRLEY L	470 CILLEY HILL RD UNDERHILL, VT 05489	13 VETERAN ST	1
	ANDERSON EILEEN 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 KNOX 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 E	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 BETHLEHEM, PA 18018	120 SEASHORE AVE	1
	SESTITO RUDOLPH A & ANNE E 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



Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | Tel: 874-8490

[City](#)
[Home](#)
[Departments](#)
[City Council](#)
[E Services](#)
[Calendar](#)
[Links](#)

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

Current Owner Information:**Services****Applications****Doing Business****Maps****Tax Relief****Tax Roll****Q & A**
[browse city services a-z](#)
[browse facts and links a-z](#)


Best viewed at 800x600, with Internet Explorer

CBL 084 E005001
Land Use Type SINGLE FAMILY
Property Location 8 RYEFIELD ST
Owner Information MORGAN PHILIP H
 30 BARKLEY AVE
 AUBURN ME 04210
Book and Page 18062/345
Legal Description 84-E-5
 RYEFIELD ST S
 PEAKS ISLAND
 3393 SF
Acres 0.078

Current Assessed Valuation:

TAX ACCT NO.	12594	OWNER OF RECORD AS OF APRIL 2009
		MORGAN PHILIP H
LAND VALUE	\$260,200.00	30 BARKLEY AVE
BUILDING VALUE	\$107,900.00	AUBURN ME 04210
NET TAXABLE - REAL ESTATE	\$368,100.00	
TAX AMOUNT	\$6,884.90	

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

Building Information:

Card 1 of 1

Year Built 1902
Style/Structure Type OLD STYLE
Stories 2
Bedrooms 3
Full Baths 1
Total Rooms 6
Attic NONE
Basement CRAWL
Square Feet 1564

[View Sketch](#)[View Map](#)[View Picture](#)**Sales Information:**

Sale Date	Type	Price	Book/Page
9/10/2002	LAND + BUILDING	\$0.00	18062/345
10/16/2000	LAND + BUILDING	\$0.00	15787/290
11/1/1995	LAND + BUILDING	\$0.00	12226/307
10/1/1995	LAND + BUILDING	\$175,000.00	12177/1

[New Search](#)