

**Board of Appeals Meeting
October 3, 2018 – 7:00 PM
Town Office Conference Room**



Meeting Materials

**Board of Appeals Meeting
October 3, 2018 – 7:00 PM
Town Office Conference Room**

AGENDA

CALL TO ORDER

MINUTES

June 4, 2018

COMMUNICATIONS

APPEALS

Douglas Wight – Administrative Appeal – 108 Legendre Lane – Map 23 Lot 6

OTHER BUSINESS

ADJOURNMENT

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

CALL TO ORDER – Chairperson Mark Hyland called the meeting to order at 7:00pm with Members Gerard Bowes, Joseph Radziszewski, Jr, Lou Ann Lancaster, and Stanley Tetenman (a voting member for this meeting) present. Member Richard Carlson absent with notice.

Public Attendance: Code Enforcement Officer Scott Neal, Recording Secretary Sarah Merrill, Elizabeth and David Carr, David Gravel, John Leonard, and Steve Lancaster present.

MINUTES – None

COMMUNICATIONS – None

APPEALS – Variance Appeal – 54 Watson Road – Elizabeth and David Carr
– Map 5 Lot 16 Sub-lot B7

- **Elizabeth and David Carr are present.**
- **Standing:** Member Radziszewski makes a motion that the Carr's have standing by virtue of the fact that they own Map 6 Lot 16 Sub-lot B7. Vice Chairperson Bowes seconds the motion. Discussion: None Vote: 5- Yes 0-No
- **Cause of Action:** Vice Chairperson Bowes makes a motion that the Appellants have a cause of action because the Town is saying that they have violated their building permit of June 11, 2008. Member Radziszewski seconds the motion. Discussion: None
Vote: 5- Yes 0-No
- **Appellants:** Elizabeth and David Carr are before the Board with a variance appeal request. They have a 24' x 24' garage that does not meet the setback requirements. Ms. Carr states that the garage was placed in this spot because it was the only practical spot due to the steep slope of the lot, the location of the leach field, the location of the driveway, and the door to the lower apartment. The Carr's were given a building permit by a previous Code Enforcement Officer (hereafter "CEO"), Arthur Dunlap, who then inspected the slab. During this inspection the garage did not meet the required setbacks stated on the permit and is too close to the right of way. Ms. Carr states that CEO Dunlap did not tell them it had to be moved. On January 2, 2018 the Carr's received a letter from the previous CEO, Robert Folsom, stating that the garage didn't meet the setback requirements and needed to be moved. Ms. Carr states that they looked

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

into moving the garage, but the cost is \$12,000 which is a hardship and why is it necessary 10 years after the fact.

- Chairperson Hyland states that there are a couple of problems. First is that we can't expect the CEO to know every detail about each person's piece of property. He doubts that CEO Dunlap knew about the right of way.
 - Ms. Carr states that CEO Dunlap was not only aware of the right of way he also helped them design it. Also, that CEO Dunlap allowed the garage to go there because it's the most practical, highest, and best use of the property. He used his discretion to do this, which in her understanding the CEO is allowed to do.
 - Member Radziszewski asked if the right of way was in the design and if CEO Dunlap allowed her to do that. Ms. Carr states it was in the design and that CEO Dunlap allowed it.
- Vice Chairperson Bowes asks if zoning or something had changed a few years ago.
 - Ms. Carr states that in 2014 or 2015 the zoning had changed, and the lot changed hands between Ms. Carr and her sister when they swapped properties requiring deed changes. Ms. Carr and her sister were then held to the new code requirements for their properties.
- Ms. Carr states that CEO Dunlap as well as CEO Nick Adams weren't going to require them to move the garage. Also, CEO Folsom said he wasn't going to make them move the garage until he was pressured by Jim Porter of the Planning Board.
- Member Tetenman wants to know if there are no notes in the file by any former CEO stating what they have said to a person about their property. Chairperson Hyland states that it's happened before.
 - Member Tetenman would like to suggest to the current CEO Scott Neal that he keep notes of similar types of conversations to avoid situations like this.
 - Chairperson Hyland states that it is up to the applicant to comply with the variance. Meaning they were given a permit stating that they have to have a certain setback and they should have kept the setback.
 - Member Tetenman asks if the permit was given with the intention that they wouldn't meet the setbacks then why can't the variance be given.
 - Chairperson Hyland states that the CEO doesn't have the ability to change the setbacks. If you can't comply with the ordinance, then you have to go to the Planning Board or the Appeals Board to change the setbacks.
 - Ms. Carr states that the setback for an accessory structure is twenty feet (20') not forty feet (40') which proves that this permit is just a boiler plate permit.
 - CEO Neal states that is the requirement for the side setback which is what can be used now because the Carr's have added the driveway in. However, on the original permit that was considered the road frontage not a side setback.

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

- Member Radziszewski asks if these properties are owned by them and if anyone else is involved with this.
 - Ms. Carr states that her family owns the properties, that Mr. Gravel lives on the front lot, but he doesn't use the right of way, and only her family uses the right of way.
- Vice Chairperson Bowes states that the problem occurs if the Carrs ever go to sell one of the lots on the right of way then the lot would become a non-conforming lot because of the garage.
- Chairperson Hyland asks if this is a back-lot driveway is there a driveway on the front of the lot.
 - Ms. Carr states that there isn't. That of the three lots only the second and third lot are on the right of way and it cost \$36,000 to put in. Ms. Carr showed on a survey map how this is set up.
- Chairperson Hyland asks what was resolved when they went to the planning board.
 - Ms. Carr states that they required her to put in a back-lot driveway up to Town standards with a hammer head and a turn around etc.
 - Vice Chairperson Bowes suggests that they table this and ask Jim Porter, Planning Board Chairperson, to attend a meeting. Vice Chairperson Bowes recalls that this was mentioned in a planning board meeting he attended. If the Carr's are saying that Chairperson Porter was after CEO Folsom to issue the violation, then maybe in Chairperson Porter's mind when they approved the back-lot driveway to have a buildable lot they were under the assumption that it was agreed to move the garage.
 - Ms. Carr states that is not what happened and shows the survey map for the back-lot driveway with the signatures from the planning board. She further states that the garage was not part of the conversation with the planning board on back-lot driveway.
- Chairperson Hyland states that it sounds like the right of way was there but there was no intent to develop it during this whole process. He asks if they were always going to put a driveway in this lot. Ms. Carr states that they did.
- Ms. Carr states that her issue tonight is that they were issued a permit, got it approved, got the building approved, and then ten years later we're told it needs to be moved even though various CEO's didn't want to make us move it because it's impractical.
 - Chairperson Hyland states that even though it's impractical but because of everything that's happened on the lots over the years it's become a problem because it no longer complies with the setbacks.
 - Member Tetenman asks if it originally complies with the setbacks.
 - Member Radziszewski states that he thinks it did comply because the sixty-foot (60') right of way wasn't in there.
 - Ms. Carr states that the right of way was always in the plan because they had to have the frontage for the second and third lots.

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

- Chairperson Hyland asked if they were ever planning to bring the driveway from lot one onto lot two.
 - Ms. Carr states they weren't because lot one is on Upper Range Drive with its own address and doesn't need to use the right of way.
- Member Radziszewski asks the Ms. Carr what she would do if they Board turns down her variance request.
 - Ms. Carr states they would have to either tear it down or bring in the fill, but it just doesn't seem reasonable to spend that kind of money.
 - Member Radziszewski states that it's sixteen feet five inches (16' 5") that they're asking for a variance on not a couple of inches.
 - Ms. Carr states that the variance was granted at the time it was built.
 - CEO Neal states that the original right of way curved away from the garage close to one side. Therefore, it may have looked at the time like it met the setback requirements, but it doesn't anymore because the right of way has been straightened.
 - Chairperson Hyland asks if because of fire protection and things like that they have to have a certain size for the back-lot driveway.
 - CEO Neal states that is correct.
 - Ms. Carr states that it's required to be twelve feet (12') wide with two feet (2') on either side, but the ditching on this is what required it to be the full sixty feet (60').
- Chairperson Hyland asks if there are any other questions for the Carrs. Hearing none he then asks if there any questions from the audience for the Carrs. Hearing none he then asks if the CEO has any questions. Hearing none he asks if there's anyone who wishes to speak in favor of this variance request.
- **Public Comment:** David Gravel of 50 Watson Road states that the Carrs should get the variance approved because of all of the work they've done.
- Chairperson Hyland asks if anyone wishes to speak in opposition of the variance request.
- John Leonard of 156 Cleve Tripp Road states that he has conflict with the project because it affects the trails on his property and he thinks the variance shouldn't be given.
- Chairperson Hyland asks if anyone has any rebuttal to what Mr. Leonard had to say.
- Steve Lancaster of 164 Watson Road states that he isn't sure what Mr. Leonard's conflict is and would he please clarify.
- Chairperson Hyland states that he thinks the conflict is that he owns the property across from the violation and are looking right at it.
- Mr. Gravel states that he uses the trails on Mr. Leonard's property and doesn't think that the variance affects them at all.
- **Closing the Public Hearing:** Vice Chairperson Bowes makes a motion to close the public hearing. Member Tetenman seconds the motion. Discussion: None

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

Vote: 5- Yes 0- No

- **Board Deliberations**

- Chairperson Hyland reads through § 304.2 B. 2. d. 2. (page 25 of the 2018 CLUC) of the Poland Land Use Code, about the requirements of variance appeals and the specific reasons a variance may or may not be given.
- Chairperson Hyland states that in his opinion of these CLUC sections the Carrs do not meet § 304.2 B.2.d.2.b. and § 304.2 B.2.d.2.c.
- Member Tetenman states that based on the letters from people in the neighborhood he doesn't think that granting the variance will cause an undesirable change in the neighborhood.
- Member Radziszewski states he would like to know if CEO Neal has anything he'd like to add.
- CEO Neal states that he has offered to let the Carrs use the back-lot driveway to turn what is now the front of the lot into the side of the lot. This would allow them to use side lot setbacks for an accessory structure which is twenty feet (20'). It would be a matter of turning the garage sixteen and a half feet (16' 5") and pushing it over a bit which wouldn't push it back down towards the hill.
- Member Radziszewski states that they don't meet two of the criteria. But if they were willing to shift the garage around it would be better because this will be a problem to a future buyer.
- Member Bowes states it will be a problem for a future buyer because they won't be able to get title insurance with a structure in a setback. You would have to have a variance.
- Chairperson Hyland asks CEO Neal if the structure was rotated that it would be farther away from the property line.
- CEO states that if you can bring the front corner over nine feet (9') and rotate the back corner around so that there's twenty feet (20') at both corners it pushes it closer to the house that's there and away from the slope.
- Ms. Carr states that it is a minimum of \$5,000.00 to move it plus the pad you have to pour. It would probably be a minimum cost of \$7,000.00 to pivot the garage. Ms. Carr believes this meets the economic hardship criteria.
- Member Tetenman states that the previous CEO gave approval whether the permit was written incorrectly, or it should have gone to the planning board. The fact is it wasn't done and that's happened in the past as to things being approved that shouldn't have been approved. Cost does become a factor. It's about whether it's feasible in reality.
- Member Lancaster states that if someone in the future buys that property they'll understand what's going on and if there's a variance then there won't be an issue.
- Vice Chairperson Bowes states that you went to the Planning Board to get your back-lot driveway and the issue of the garage came up several times because it was in the setbacks and needed to be moved. Because of turn

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

13. The conditions and character of the neighborhood are: *residential properties.*
14. The conditions of the property are: *primarily wooded with areas that are cleared for structures.*
15. The applicant has requested the following type of variance (check appropriate one):
- a. ☐ Undue Hardship Dimensional Variance (30-A M.R.S.A §4353(4));
 - b. ☐ Disability Variance for ingress/egress to a dwelling (30-A M.R.S.A §4353(4- A)(A);
 - c. ☐ Disability variance for Residential Garage (30-A M.R.S.A §4353-A(B), available only if the municipality has adopted an ordinance to authorize this variance
 - d. ☐ Setback variance for Single Family Dwellings (30-A M.R.S.A §4353(4- B), available only if the municipality has adopted an ordinance to authorize this variance, or
 - e. ☒ Practical Difficulty Dimensional Variance (30-A M.R.S.A §4353(4-C), available only if the municipality has adopted an ordinance to authorize this variance.
16. On *June 4, 2018* the Board of Appeals conducted a public hearing on this application for a variance to deliberate this application and to prepare Findings of Fact and Conclusions of Law.
17. Additional facts (other facts relevant to ordinance criteria): *None*

CONCLUSIONS OF LAW:

Based upon the facts stated above and for the reasons that follow, the Board concludes that:

- 1. The proposed structure or use would meet then performance standards of this Code except for the specific provision which has created the nonconformity and from which relief is sought; and
- 2. The strict application of this Code to the petitioner and the petitioner's property would cause a practical difficulty when the following conditions exist:
 - a. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood: *The unique circumstances for this property is that the slopes are steep while most of the lots don't have steep slopes.*
 - b. That the granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties: *We heard testimony from abutters that it would and it would not produce an undesirable change in the neighborhood.*
 - c. That the practical difficulty is not the result of action taken by the petitioner or a prior owner: *A majority of the members of the board found that the difficulty was a result of actions taken by the petitioner in that they built the garage too close to the right of way. Two of the members felt that part of the*

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

- responsibility for putting the garage in the wrong spot belongs to the Code Enforcement Officer at the time the garage was permitted and inspected.*
- d. No other feasible alternative is available to the petitioner: *There were members of the board who felt that rotating the garage and changing the location was not necessarily infeasible even though it may be expensive.*
 - e. That the granting of the variance will not unreasonably adversely affect the natural environment: *We heard no testimony that it would unreasonably adversely affect the natural environment.*
 - f. That the structure or land area for which a variance is sought is not located in whole or in part within the Shoreland Area and/or one hundred (100) year flood plain: *We heard testimony from the Carr's, abutting property owners, and the Code Enforcement Officer that the property is outside the shoreland zone.*

DECISION:

On the basis of the above Findings of fact and Conclusions of Law, the Board of Appeals voted by a vote of 2 -3 to *deny* the application for a variance.

APPEALS:

Parties aggrieved of this decision may appeal to Superior Court within 45 days from the date of the decision pursuant to 30-M.R.S.A §2691 and Maine Rules of Civil Procedure, Rule 80B.

OTHER BUSINESS – None

ADJOURN – Member Tetenman makes a motion to adjourn the meeting at 8:33 pm. Member Radziszewski seconds the motion. Discussion: None Vote: 5-Yes 0-No

Recorded by: Sarah Merrill

POLAND BOARD OF APPEALS
MINUTES OF MEETING
June 4, 2018
Approved on _____, 2018

Board of Appeals

Mark Hyland, Chairperson

Gerard Bowes, Vice Chairperson

Richard Carlson, Secretary

Lou Ann Lancaster, Member

Joseph Radziszewski, Member

Stan Tetenman, Alternate



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

September 17, 2018

Douglas Wight
P.O. Box 99
West Poland, ME 04291

VIA: Certified USPS Mail and First Class U.S. Mail

Certified Receipt No: 91 7199 9991 7033 4695 0151

Dear Mr. Wight,

Re: Administrative Appeal – Map 0023, Lot 0006

This letter is to confirm that on August 31, 2018 the Town of Poland received your request for an Administrative Appeal. In accordance with our Comprehensive Land Use Code section 304.3, we are required to hold a Public Hearing within thirty (30) days of receipt of your appeal. The original date for your appeal was September 17, 2018. However, on September 7, 2018 we received a letter from you stating that the original date chosen was a hardship and waiving your right to a hearing within thirty (30) days in the interest of a new date. The Appeals Board has approved this request. Your scheduled hearing date is **Wednesday, October 3, 2018 at 7:00 PM in the Town Office Conference Room.**

If you have any questions, please contact me at 998-4604.

Sincerely,

Sarah Merrill
Recording Secretary



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6123

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

AURILIO, MARY LYNNE
4 WINDSOR DR.
BOW, NH 03304



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6130

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

BARNES, LOWELL E., JR.
34 WYATTS WAY
PORTER, ME 04068



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6147

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

BORYS, CHRISTOPHER
50 PERLEY AVE.
PEABODY, MA 01960



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6048

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

COLLET, DANIEL L.
10 MARCOTTE AVE.
LEWISTON, ME 04240



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6055

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

JACQUES, HEIDI A.
72 HICKORY DR.
AUBURN, ME 04210



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6062

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LEGENDRE, PAUL R.
38 WOODSIDE DR.
LEWISTON, ME 04240



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6079

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LEGENDRE, RAYMOND I.
112 SOUTH AVE.
LEWISTON, ME 04240



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6086

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LEGENDRE, RICHARD N.
16 CLUBHOUSE LN
AUBURN, ME 04210



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6093

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LEGENDRE, ROLAND E.
13 SHEFFIELD AVE.
LEWISTON, ME 04240



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6109

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LEONARD, TIMOTHY C.
639 MEGQUIER HILL RD.
POLAND, ME 04274



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6116

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

MARCOTTE, RONALD V.
JANICE (BOUCHLES) MARCOTTE
69 WASHINGTON ST., UNIT 5
NEWBURYPORT, MA 01950



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6154

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

PONTBRIAND, MARK & GROSS, LINDA
16 ANGELICA DR.
NEW GLOUCESTER, ME 04260



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6161

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

SEDGWICK, PETER E.
78 BAYBERRY DR.
NORTH YARMOUTH, ME 04097



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD,
APPLICANT, AND ABUTTERS TO MAP 23, LOT 6

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0023, LOT 0006

DATE: SEPTEMBER 17, 2018

Certified Receipt # 91 7199 9991 7038 1933 6178

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY DOUGLAS WIGHT, FOR MAP 23, LOT 6. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 3, 2018 AT 7:00 PM** IN THE POLAND TOWN OFFICE CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

ST. HILAIRE-CRITES, LISA
108 LORING AVE.
AUBURN, ME 04210

Town of Poland
Board of Appeals

Wednesday, October 3, 2018

7:00 pm at Town Office Conference Room

Administrative Appeal for
Map 23, Lot 6

From: [Douglas Wight](#)
To: [Sarah Merrill](#)
Cc: [Douglas Wight](#); [Andrea Blunt](#)
Subject: Administrative Appeal - Wight 108 Legendre Lane
Date: Friday, September 7, 2018 2:16:25 PM

Dear Members of the Zoning Board of Appeals, Poland Maine:

I understand that my administrative appeal meeting has been scheduled for September 17, 2018. This meeting date is a hardship for me in that I have a longstanding travel commitment preventing me from being able to attend.

In the interest of scheduling a new date, I am writing to waive my right to a Zoning Board of Appeals meeting date within 30 days of the date of the filing of my appeal.

I look forward to hearing from you regarding a new meeting date.

Thank you for your consideration.

Sincerely,

Douglas Wight

Town of Poland, Maine
Board of Appeals
1231 Maine Street
Poland, Maine 04274

Application for Administrative Appeal

Appellant(s): <u>Douglas Wight</u>		
Mail Address: <u>P.O. Box 99</u>	Work Phone: <u>(617) 417-7484</u>	
Town/State/Zip: <u>West Poland, ME 04291</u>	Home Phone: <u>(207) 998-8277</u>	
Road Location: <u>108 Legendre Lane</u>		
Map # <u>0023</u>	Lot # <u>0006</u>	Sub-lot # _____

An Administrative Appeal is being sought for the relief from the decision, or lack of a decision, of the Code Enforcement Officer or the Planning Board in regard to an application for a permit or use approval. The undersigned believes that: (check one)

- ☐ An error was made in the denial of a permit or use.
- ☒ The denial was based on a misinterpretation of the ordinance.
- ☐ There has been a failure to approve or deny a permit or use within a reasonable period of time.
- ☐ (Other – please specify) _____

1. Attach a copy of any relevant papers (applications, site drawings, decisions, etc.) concerning the decision by the Code Enforcement Officer or Planning Board.

2. Attach copy of deed, sales agreement, or contract that gives you title, right, or interest in this appeal.

3. Indicate what section(s) of the ordinance that you believe is/are relevant to your appeal:
504.3.D.1.a + b Nonconforming Structures / 502.27.B.1.a Land Use Standards / 504.4 Nonconforming Uses
504.2.B.

4. Attach a statement describing the facts concerning your filing an appeal.

I hereby acknowledge that I have read this application and pertinent sections of the ordinances, and state that the information in this document is to the best of my knowledge true and accurate.

Douglas Wight
Appellant's Signature

Co-Appellant's Signature

8/30/2018
Date

Administrative Appeal
Douglas Wight, 108 Legendre Lane

Table of Contents

- Application
- Letter from Code Enforcement Officer
Exhibit A in Bannon Letter
- Town of Poland Shoreline Project Permit
Exhibit B in Bannon Letter
- Permit by Rule 2018 - 50% Repair
Exhibit C in Bannon Letter
- Amended Permit By Rule Application 2018 Replacement
Exhibit D in Bannon Letter
- QUITCLAIM Deed
Exhibit E in Bannon Letter
- Appellant Statement Describing the Facts
- Letter to CEO from John Bannon the Appellant's lawyer
Exhibit F - Permit by Rule 2000
Exhibit G - Email Exchange between Colin Clark and CEO
- Email from Town of Poland Lawyer Natalie Burns to Scott Neal
- Letter from Appellant's Lawyer John Bannon responding to
Natalie Burns' opinion



EXHIBIT A

Code Enforcement Office

1231 Maine Street, Poland, Maine 04274
(207) 998-4604 sneal@polandtownoffice.org

Douglas Wight
P.O. Box 99
West Poland, Maine 04291

July 19, 2018

Parcel ID: 0023-0006

Located At: 108 Legendre Lane
Zoning District: Rural Residential-1, Limited Residential

Dear Mr. Wight,

You applied for a Shoreland Project permit (# 2018-391) For a permanent dock replacement due to winter ice damage. Accompanied with your application was the following:

- A cover letter describing your project.
- An application checklist.
- A hand drawn plot plan showing the proposed dock size and location.
- An elevation from Westerman Marine Corp.
- The deed for your property
- A Permit by Rule (# 65791) from the Maine Department of Environmental Protection.

Any non-conforming structure in the Limited Residential shoreland district removed by more than 50% and rebuilt would be considered a new structure. The Poland Land Use Code (CLUC) Table 508.27.A § 17-B shows that new permanent docks are not allowed in the Limited Residential district.

In conclusion and pursuant to Ch. 5, Table 508.27.A § 17-B of the CLUC, I regret to inform you that this office has denied your permit application. You have the right to appeal this decision to the Board of Appeals within forty five (45) days of the date of this letter pursuant to Ch. 3, § 304.2. B1 of the CLUC.

Sincerely,

Scott Neale
Code Enforcement Officer

CC: Matthew Garside, Town Manager

ENC: Administrative Appeal Application

TOWN OF POLAND

1231 Maine Street
Poland, ME 04274Shoreland Project
Permit Application

FOR OFFICIAL USE ONLY

Date Received	
Zoning	
Property ID	
Building Code	
Estimated Cost	
Permit Fee	
Receipt Number	
Reviewed By	

Permit Number: _____

1. Please attach all required information detailed on the application check list.
2. If you have questions about what is required in order to obtain a permit, contact the Code Enforcement Office.
3. DEP Certification is required for projects in Shoreland Zoning.

Project Address: 108 Legendre Lane, Poland, ME 04274

Parcel ID#: Map: 0023 Lot: 0006

Estimated Cost: TBD

Current Use: Active Dock on Thompson Lake used for boating and swimming

Proposed Use: Same - Active use of dock for boating and swimming

Please Describe Your Project: Replace existing dock due to winter ice damage.

Soil Disturbance

☒ Dock

Tree Cutting

☒ Other

Property Owner Information

Owner Name:	Douglas Wight
Mailing Address:	PO BOX 99 West Poland, ME 04291
Phone Number:	617.417.7484
Email Address:	d_d_wight@yahoo.com

Contractor or Applicant Information

Contractor Name:	Peter Spencer - Waterman Marine Corp
Mailing Address:	475 US Route #1, Ste 6 Freeport, ME 04032
Phone Number:	207-798-2600
Email Address:	spencerpf@gmail.com
DEP Certification:	

Please attach all of the information required on the permit checklist

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 I have been authorized by the owner to make this application as his/her authorized agent. I agree to confirm 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 Officials 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.

Applicant Signature: _____

Date: 6/11/2018

Douglas Wight Property
108 Legendre Lane
Thompson Lake
Poland, ME 04274

(m) 617.417.7484

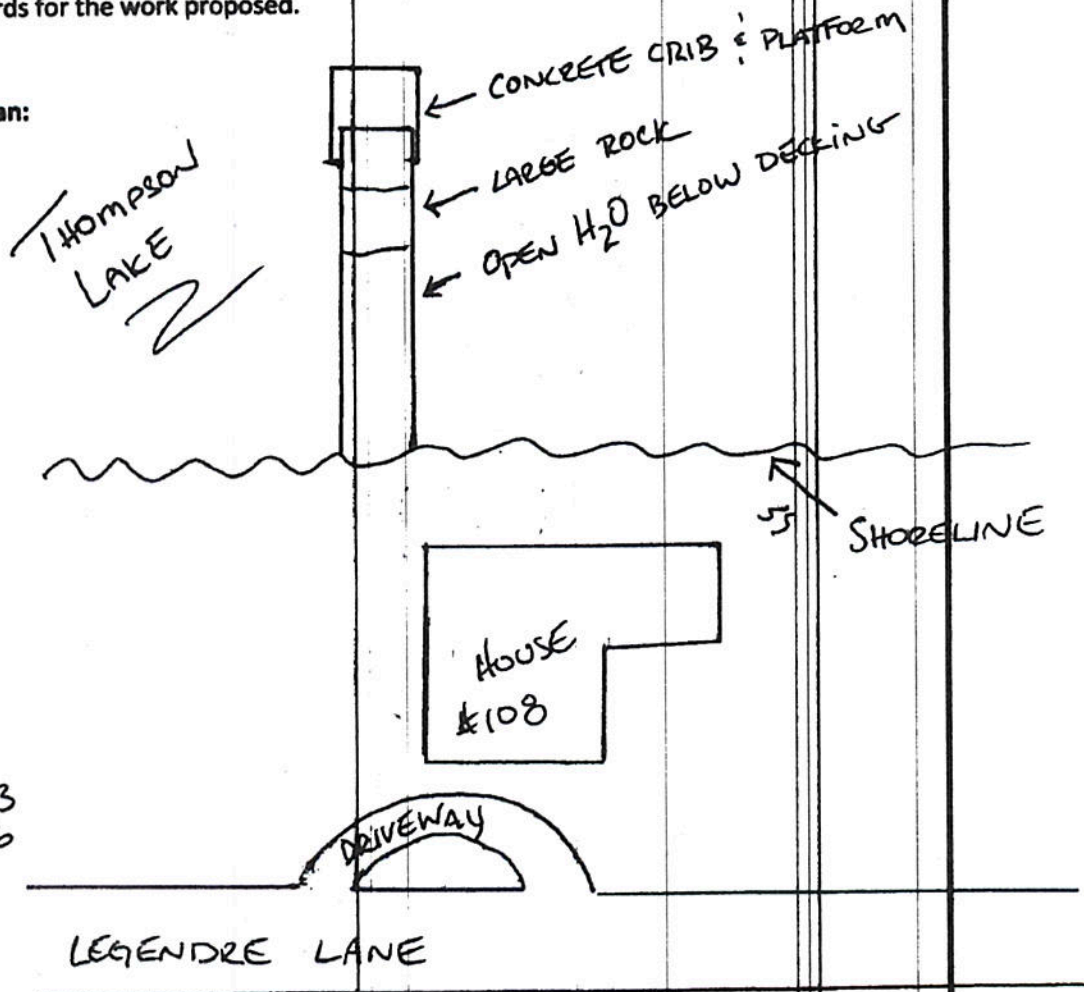
Town of Poland
1231 Maine Street
Poland, ME 04274

June 11, 2018

RE: Town of Poland ME – Shoreland Project Permit Application: Repair/Replace Existing Dock

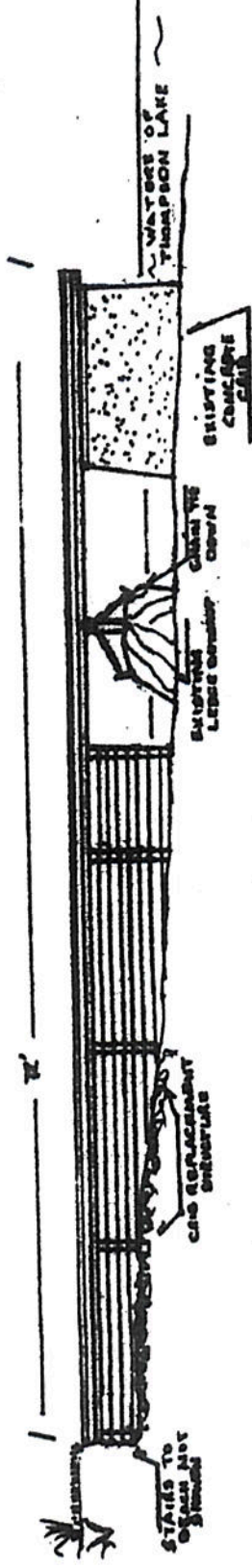
The existing dock is functioning as intended, and has been for the past 16 years, and therefore maybe replaced/re-built with a Permit by Rule from the Maine DEP. This includes the reconstruction of existing stone, timber and concrete cribwork in the exact footprint as currently exists. The design does not allow for filling in open-water areas between cribwork. Enclosed, please find the Town of Poland Shoreland Project Permit Application, the State of Maine Permit by Rule application, lot lines, dock design and standards for the work proposed.

Plot Plan:



MAP: 0023
LOT: 0006

Douglas Wight



PROFILE
SCALE 1" = 10'

**Proposed Pier Replacement
for
Douglas Wight & Andrea Blunt
at
108 Legendre Lane
Thompson Lake**



Waterman Marine Corp. 2012
All Rights Reserved
02/01/2012

PERMIT BY RULE NOTIFICATION FORM
(For use with DEP Regulation, Natural Resources Protection Act- Permit by Rule Standards, Chapter 305)
PLEASE TYPE OR PRINT IN BLACK INK ONLY

APPLICANT INFORMATION (Owner)		AGENT INFORMATION (If Applying on Behalf of Owner)	
Name:	Douglas Wight	Name:	EXHIBIT C
Mailing Address:	P.O. Box 99	Mailing Address:	
Town:	W. Poland	Town:	
State and Zip Code:	ME, 04991	State and Zip Code:	
Daytime Phone #:	(617) 417-7484	Daytime Phone #:	
Email Address:	d-d-wight@yahoo.com	Email Address:	

PROJECT INFORMATION					
Part of a larger project? (check one):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	After the Fact? (check one):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project involves work below mean low water? (check one):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Town:	Poland	Project Location (Address):	108 Legendre Lane	Name of waterbody:	Thompson Lake
Brief Project Description:	Replace @ 50% and repair permanent dock. Previous P.B.R. was issued in 2000 with a rebuild occurring in 2002.				
Brief Directions to Site:	Legendre lane is off of Megquica Hill Rd in Poland				

PERMIT BY RULE (PBR) SECTIONS (Check at least one): I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Rules, Chapter 305. I and my agents, if any, have read and will comply with all of the standards in the Sections checked below.

- | | | |
|--|---|--|
| <input type="checkbox"/> Sec. (2) Act. Adj. to Protected Natural Res. | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (17) Transfers/Permit Extension |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (11) State Transportation Facil. | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (19) Activities in/on/over significant vernal pool habitat |
| <input type="checkbox"/> Sec. (5) REPEALED | <input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | <input type="checkbox"/> Sec. (20) Activities located in/on/over high or moderate value inland waterfowl & wading bird habitat or shorebird feeding & roosting areas |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation | <input type="checkbox"/> Sec. (14) REPEALED | |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (15) Public Boat Ramps | |
| <input type="checkbox"/> Sec. (8) Shoreline stabilization | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects | |
| <input type="checkbox"/> Sec. (9) Utility Crossing | | |

NOTE: Municipal permits may also be required. Contact your local code enforcement office for more information. Federal permits may be required for stream crossings and for projects involving wetland fill. Contact the Army Corps of Engineers at the Maine Project Office for more information.

NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS

- ☒ **Attach** all required submissions for the PBR Section(s) checked above. The required submissions for each PBR Section are outlined in Chapter 305 and may differ depending on the Section you are submitting under.
- ☐ **Attach** a check for the correct fee made payable to: "Treasurer, State of Maine". The current fee for NRPA PBR Notifications can be found at the Department's website: <http://www.maine.gov/dep/feesched.pdf>
- ☒ **Attach** a location map that clearly identifies the site (U.S.G.S. topo map, Maine Atlas & Gazetteer, or similar).
- ☐ **Attach** Proof of Legal Name if applicant is a corporation, LLC, or other legal entity. Provide a copy of Secretary of State's registration information (available at <http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x>) Individuals and municipalities are not required to provide any proof of identity.

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules.

I also understand that this PBR becomes effective 14 calendar days after receipt by the Department unless the Department approves or denies the PBR prior to that date.

By signing this Notification Form, I represent that the project meets all applicability requirements and standards in the rule and that the applicant has sufficient title, right, or interest in the property where the activity takes place.

Signature of Agent or Applicant:	<i>Douglas D. Wight</i>	Date:	April 9, 2018
----------------------------------	-------------------------	-------	---------------

Keep a copy as a record of permit. Send the form with attachments via certified mail or hand deliver to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. Work carried out in violation of any standard is subject to enforcement action.

AUGUSTA DEP
17 STATE HOUSE STATION
AUGUSTA, ME 04333-0017
(207)287-7688

PORTLAND DEP
312 CANCO ROAD
PORTLAND, ME 04103
(207)822-6300

BANGOR DEP
106 HOGAN ROAD
BANGOR, ME 04401
(207)941-4570

PRESQUE ISLE DEP
1235 CENTRAL DRIVE
PRESQUE ISLE, ME 04769
(207)764-0477

OFFICE USE ONLY	Ck.#	Date	Staff	Staff	After Photos
PBR #	FP		Acc. Date	Def. Date	

DEPARTMENT OF ENVIRONMENTAL PROTECTION
PERMIT BY RULE NOTIFICATION FORM
 (For use with DEP Regulation, Natural Resources Protection Act- Permit by Rule Standards, Chapter 305)
 PLEASE TYPE OR PRINT IN BLACK INK ONLY

AMENDMENT
 REQUESTED

APPLICANT INFORMATION (Owner)		AGENT INFORMATION (If Applying on Behalf of Owner)	
Name:	Douglas Wight	Name:	
Mailing Address:	P.O. Box 99	Mailing Address:	EXHIBIT D
Town:	W. Poland	Town:	
State and Zip Code:	ME 04291	State and Zip Code:	
Daytime Phone #:	(617) 417-7484	Daytime Phone #:	
Email Address:	d-d-wight@yahoo.com	Email Address:	

PROJECT INFORMATION			
Part of a larger project? (check one):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	After the Fact? (check one):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Project Town:	Poland	Project Location (Address):	108 Legend Lake
Brief Project Description:	Amend previous permit to allow full replacement of permanent		
Brief Directions to Site:	The damage was more substantial than expected.		

PERMIT BY RULE (PBR) SECTIONS (Check at least one): I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Rules, Chapter 305. I and my agents, if any, have read and will comply with all of the standards in the Sections checked below.

- | | | |
|--|---|--|
| <input type="checkbox"/> Sec. (2) Act. Adj. to Protected Natural Res. | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (17) Transfers/Permit Extension |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (11) State Transportation Facil. | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (19) Activities in/on/over significant vernal pool habitat |
| <input type="checkbox"/> Sec. (5) REPEALED | <input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | <input type="checkbox"/> Sec. (20) Activities located in/on/over high or moderate value inland waterfowl & wading bird habitat or shorebird feeding & roosting areas |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation | <input type="checkbox"/> Sec. (14) REPEALED | |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (15) Public Boat Ramps | |
| <input type="checkbox"/> Sec. (8) Shoreline stabilization | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects | |
| <input type="checkbox"/> Sec. (9) Utility Crossing | | |

NOTE: Municipal permits may also be required. Contact your local code enforcement office for more information. Federal permits may be required for stream crossings and for projects involving wetland fill. Contact the Army Corps of Engineers at the Maine Project Office for more information.

NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS

- ☒ **Attach** all required submissions for the PBR Section(s) checked above. The required submissions for each PBR Section are outlined in Chapter 305 and may differ depending on the Section you are submitting under.
- ☐ **Attach** a check for the correct fee made payable to: "Treasurer, State of Maine". The current fee for NRPA PBR Notifications can be found at the Department's website: <http://www.maine.gov/dep/feesched.pdf>
- ☒ **Attach** a location map that clearly identifies the site (U.S.G.S. topo map, Maine Atlas & Gazetteer, or similar).
- ☐ **Attach** Proof of Legal Name if applicant is a corporation, LLC, or other legal entity. Provide a copy of Secretary of State's registration information (available at <http://licrs.informe.org/nei-sos-licrs/ICRS?MainPage=x>) Individuals and municipalities are not required to provide any proof of identity.

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules.

I also understand that this PBR becomes effective 14 calendar days after receipt by the Department unless the Department approves or denies the PBR prior to that date.

By signing this Notification Form, I represent that the project meets all applicability requirements and standards in the rule and that the applicant has sufficient title, right, or interest in the property where the activity takes place.

Signature of Agent or Applicant:	Date:
Douglas Wight	5/9/2018

Keep a copy as a record of permit. Send the form with attachments via certified mail or hand deliver to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. **Work carried out in violation of any standard is subject to enforcement action.**

AUGUSTA DEP
 17 STATE HOUSE STATION
 AUGUSTA, ME 04333-0017
 (207)287-7688

PORTLAND DEP
 312 CANCO ROAD
 PORTLAND, ME 04103
 (207)822-6300

BANGOR DEP
 106 HOGAN ROAD
 BANGOR, ME 04401
 (207)941-4570

PRESQUE ISLE DEP
 1235 CENTRAL DRIVE
 PRESQUE ISLE, ME 04769
 (207)764-0477

OFFICE USE ONLY	Ck.#	Date	Staff	Staff	After Photos
PBR #	FP		Acc. Date	Def. Date	

PROJECT DIAGRAM

□ = 3ft x 3ft

↑
ROAD

HOUSE

PROPERTY LINE

12'

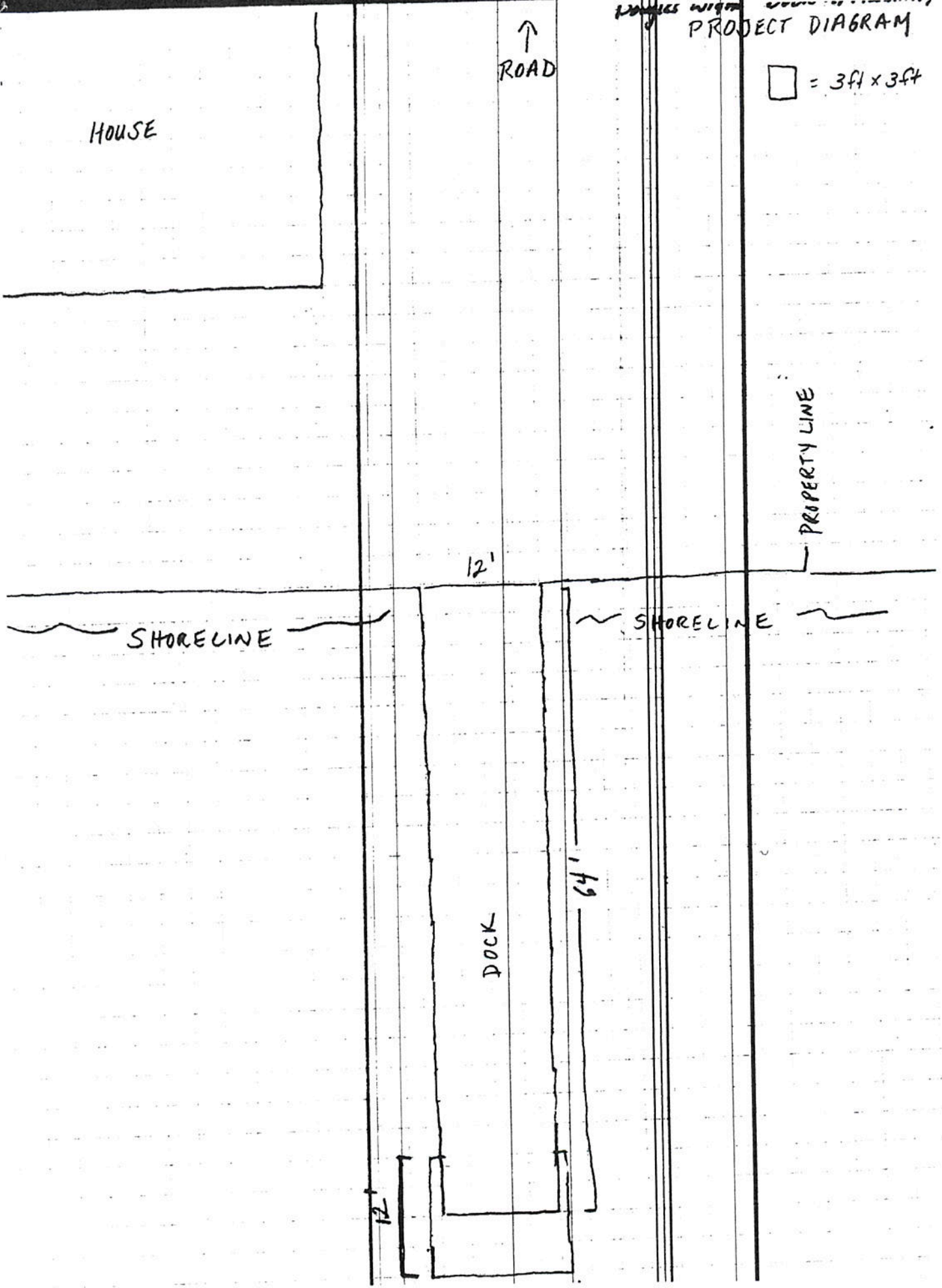
SHORELINE

SHORELINE

DOCK

64'


12'



This instrument prepared by:
Mortgage Connect, L.P.
260 Airside Drive
Moon Township, PA 15108

QUITCLAIM DEED

File No: 726624

 KNOW ALL MEN BY THESE PRESENTS: That Douglas D. Wight and Candace J. Wight, as joint tenants whose address is 108 LEGENDRE LANE, WEST POLAND ME, 04291 Quit Claims(s) to Douglas D. Wight, ~~and Candace J. Wight~~ whose address is 108 LEGENDRE LANE, WEST POLAND ME, 04291 the following described premises situated in the City of WEST POLAND, County of ANDROSCOGGIN and the State of Maine, to-wit:

See Exhibit A attached hereto and made a part hereof

commonly known as: 108 LEGENDRE Lane, WEST POLAND, ME 04291

Tax ID No.: Map 23 Lots 6 & 9

For the sum of no consideration, subject to the existing building and use restrictions, easements, and zoning ordinances, if any.

BEING the same premises which Normand D. St. Hilaire and Joanne St. Hilaire, Trustees under Trust Agreement dated July 23, 1998 in deed dated 09/11/2000 and recorded 09/13/2000 in the ANDROSCOGGIN County Recorder's Office in Deed Book Volume 4504, page 246, granted and conveyed to Douglas D. Wight and Candace J. Wight, as joint tenants, the Grantors herein.

TO HAVE AND TO HOLD to the said Grantees, his/her/their heirs, personal representative, executors and assigns forever: it being the intention of the party/parties to this conveyance, that in the event one grantee herein survives the other, the entire interest in fee simple shall pass to the surviving Grantee, and if one does not survive the other, then the heirs and assigns of the Grantees herein shall take as tenants in common.

IN WITNESS WHEREOF, The said party/parties of the first part have/has hereunto set hand and seal the day and year above written.

Douglas D. Wight
DOUGLAS D WIGHT

CANDACE J. WIGHT

Oct. 29, 2015

State of Maine

County of Androscoggin (SS)

The foregoing instrument acknowledged before me this 29 day of October in the year 2015 before me, the undersigned notary public, personally appeared

Douglas D. Wight



Linda Marie Mercer

Notary Public

My Commission Expires: 02/23/21

IN WITNESS WHEREOF, The said party/parties of the first part have/has hereunto set hand and seal the day and year above written.

~~DOUGLAS WIGHT~~

X [Signature]
CANDACE J. WIGHT

X Oct 29, 2015
DATE:

State of Massachusetts

County of Middlesex (SS)

The foregoing instrument acknowledged before me this 29th day of October in the year 2015 before me, the undersigned notary public, personally appeared

Candace J. Wight



X [Signature]
Notary Public

My Commission Expires June 23, 2017

**Exhibit A Legal
Description**

The land in Poland, County of Androscoggin and State of Maine, more particularly bounded and described hereto:

Three certain lots or parcels of land, with any buildings thereon, situated in the Town of Poland, County of Androscoggin, and State of Maine, being more particularly bounded and described as follows:

Parcel 1: A certain lot or parcel of land with the buildings thereon situated in said Poland, on the easterly shore of Thompson Lake, so called, bounded and described as follows: COMMENCING at the northwesterly corner of land formerly of Blanche Cote, now of Cecile Croteau on the shore of said lake; thence by the shore of said lake at low water mark in a northerly direction one hundred fifty (150) feet to land of A. Robert St. Hilaire, Jr.; thence at right angles in an easterly direction one hundred (100) feet to the right of way, so called; thence by said right of way in a southerly direction one hundred fifty (150) feet to said Croteau's land; thence by said Croteau's land one hundred (100) feet to the point of beginning. TOGETHER with the right to use in common with other lot owners the right of way or road now in use.

Parcel 2: A certain lot or parcel of land situated in said Poland near the shore of Lake Thompson, so called, and being directly in back of the lot described as parcel 1 hereof, and being more particularly described in a deed from George H. Trip to A. Robert St. Hilaire, Sr. dated April 1, 1940, recorded in said registry in Book 504, page 412.

Parcel 3: A certain lot or parcel of land situated in said Poland near the shore of Thompson Lake, so called, and being one hundred fifty (150) feet wide in a north-south direction and fifty (50) feet deep in an east-west direction and being adjacent to and directly easterly of the parcel #2 hereinbefore described.

Being the same property as conveyed from Normand D. St. Hilaire and Joanne St. Hilaire, Trustees under Trust Agreement dated July 23, 1998 to Douglas D. Wight and Candace J. Wight, as joint tenants as set forth in Deed Book 4504 Page 246 dated 09/11/2000, recorded 09/13/2000, ANDROSCOGGIN County, MAINE.

Map 23 Lots 6 & 9

Quitclaim Deed

Page 3 of 4

STATEMENT DESCRIBING THE FACTS CONCERNING MY FILING AN APPEAL

Douglas Wight
108 Legendre Lane
Poland, ME 04274

August 30, 2018

Dear Members of the Poland Zoning Board of Appeals,

As a lay-person, I have been trying to understand the legal basis supporting the decision made by Poland CEO Scott Neal to deny my permit application for a permanent dock replacement.

In his permit denial letter, Scott Neal wrote "any nonconforming structure in the Limited Residential shoreland district removed by more than 50% and rebuilt would be considered a new structure. The Poland Land Use Code (CLUC) Table 508.27.A 17-B shows that new permanent docks are not allowed in the Limited Residential district."

I have found no provision in the CLUC where it states that a nonconforming structure in the Limited Residential shoreland district removed by more than 50% and rebuilt would be considered a new structure. I can only assume that Scott Neal is referring to Section 504.3.D.1.a and b of the CLUC because these are the sections that refer to 50% damage regarding nonconforming structures in the Shoreland district. Additionally, Section 504.d.D.1.b. was cited by the Town of Poland's lawyer in an email to the CEO.

Section **504.3. D.1a** and **b** are as follows:

504.3 Nonconforming Structures

D. Reconstruction or Replacement - In no case shall a structure be reconstructed or replaced to increase its nonconformity.

1. Structures in Shoreland Zoning District

a. Any nonconforming structure which is **located less than the required setback from a water body**, tributary stream, or wetland and which is damaged or destroyed, regardless of cause, by more than fifty percent (50%) of the market value of the structure before such damage or destruction, may be reconstructed or replaced provided a permit is obtained within one (1) year

of the date of damage or destruction, and provided such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purpose of this Code. When determining the setback to the greatest practical extent the Planning Board may allow for reduced setbacks from front and side lines in conformance with Section 504.3.E.1

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 504.3.A above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 504.3.C above. 2

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board, or its designee shall consider, in addition to the criteria in Section 504.3.C (Relocation) above, the physical condition and type of foundation present, if any. In addition, the provisions of Chapter 7, Floodplain Management Standards, shall be met. 18

b. Any nonconforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland which is damaged by fifty percent (50%) or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place to its pre- damaged condition with a permit from the Code Enforcement Officer. Permits shall be obtained within one (1) year of the date of said damage.

My emphasis is added above to all references to setback requirements because this demonstrates that the "50% rule" (whether under or over 50% damage) is predicated on meeting a setback requirement. Piers and docks are not subject to the minimum shoreline setback as stipulated in **Section 508.27.b.1.a.**

Section 508.27.b.1.a

(a)The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

Since this is the case, the restrictions on replacement of nonconforming structures are applicable only to structures that are nonconforming to the minimum shoreline setback. Because piers and docks are not subject to the minimum shoreline setback, those limitations as defined in **Section 504.3. D.1a and b** do not apply.

My attorney, John Bannon, made the case in his letter, a copy of which is in your packet, that the dock is a nonconforming use and not a nonconforming structure. Although Poland's attorney also considered it a nonconforming structure, she agreed in her email to the CEO (a copy is in your packet) that the dock is a nonconforming use. At this point, it will be helpful for me to make a correction to the terminology that has been used to characterize this project. Although we have been using the term "replacement" to describe the dock project, it is in fact accurate to say that this is a repair of approximately 75% and not a complete replacement. The dock will not be 100% removed because it will still have the 13' by 13' concrete base located in the water at the end of the structure. This distinction becomes extremely pertinent in terms of the argument made by the Town of Poland's lawyer that we would surrender claim to grandfathered status were we to do this project. Her argument is based on Section 504.4: Nonconforming Uses. The town of Poland's lawyer states in her email to Scott Neal:

"If the dock is treated as a nonconforming use, it is subject to Section 504.4 of the code. There is nothing in this section that allows someone to remove a structure and completely replace it in order to recreate a nonconforming use. The ordinance allows the resumption of a nonconforming use under certain circumstances, but that would be tied in this case to the existing structure. The removal of the structure is also the removal of the use and surrenders any claimed right of grandfathering."

This rational does not hold up because we will not be completely removing the structure. The concrete base will remain and will continue to serve as our access point for getting on and off our boat therefore there is no removal of the use or surrendering of the claim to grandfathered status. The Ordinance only requires that a nonconforming use that ceases to exist at any point must be resumed within a year to remain valid.

Additionally, section 504.2.B. establishes that "the normal up keep and maintenance of legal nonconforming uses and **structures** including repairs or renovations which do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, and local building and safety Codes may require. Such repair and maintenance shall comply with the Town of Poland Building Code."

Because the dock is a water dependent use, it would be expected that normal up keep and maintenance would include repairs of varying degree due to the unpredictability of winter ice damage. In summary:

- The dock will not be completely removed,
- The dock's use will not be discontinued, and
- The dock will be repaired and not expanded

These actions are all in accordance with the code as pertaining to nonconforming uses.

I believe a big part of our confusion has been the application of the 50% rule to a project that was never meant to be under its stipulations. The dock is a structure related to a nonconforming use and as such there is no applicable 50% rule. Repairs and maintenance are allowed under the code governing non-conforming uses.

As I look around Thompson Lake in Poland, I see nonconforming residential structures being torn down, expanded and rebuilt. These projects have not resulted in these buildings being characterized as "new structures" and thus subjected to current zoning laws for new construction. I believe this is because the purpose of nonconforming use and structure laws or "grandfathering" status is to protect owners from losing significant property value. The unique value of the dock was a major reason why I purchased my property 18 years ago. It is a valuable resource in terms of the property's value, history and enjoyment. In the interest of protecting my property value, I want a permit to repair my dock as this is clearly allowed by Poland's CLUC. I respectfully request that the CEO's denial of a permit, based on the premise that it is a new structure and subject to current zoning laws, be overturned because it is a misinterpretation of the ordinance.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Wight", with a large, stylized flourish at the end.

Douglas Wight

Subject: **Letter Concerning Denial of Doug Wight's Application for a Shoreland Project Permit to Replace His Permanent Dock**

From: jbannon@mpmlaw.com

To: sneal@polandtownoffice.org

Date: Monday, August 20, 2018, 5:20:41 PM EDT

Dear Scott:

I represent Doug Wight of 108 Legendre Lane in West Poland. On July 19, 2018, you sent Mr. Wight a letter denying his application for a Shoreland Project Permit to replace a permanent dock on his property. Mr. Wight asked me to review your letter to assess whether your letter correctly interpreted the CLUC.

I have been practicing land use law for 37 years. After reviewing the CLUC carefully, I very respectfully submit that you have mistakenly applied, to a nonconforming **use**, provisions of the CLUC that regulate the replacement of nonconforming **structures** that violate the minimum water body setbacks. Mr. Wight's permanent dock is not a nonconforming **structure** as defined under CLUC; and because it is a water-dependent use, the dock **cannot** violate the minimum water body setbacks so as to trigger CLUC limitations on replacement of nonconforming structures that **do** violate such setbacks.

I would like to avoid involving the Town in an administrative appeal over these issues. I am confident that, if you read my letter closely and compare it to the CLUC, you will agree that Mr. Wight is allowed to replace the permanent dock on his property.

Thank you for your attention to my letter and its attached exhibits. I hope that we will be able to resolve this matter quickly, and short of an administrative appeal.

John

Confidentiality Notice: This communication is confidential and intended to be privileged pursuant to applicable law. This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by telephone (207)773-5651 and destroy any and all contents.
IRS Notice: In accordance with I.R.S. Circular 230 we advise you that any tax advice in this email (or in any attachment) is not intended or written to be used, and cannot be used, by any recipient for the avoidance of penalties under federal tax laws. Thank you.



L-S Neal 08 20 2018.pdf
743.9kB



Exhibit A.pdf
61.4kB



Exhibit B.pdf
354.4kB



Exhibit C.pdf
454.5kB



Exhibit D.pdf
103.4kB



Exhibit E.pdf



Exhibit F.pdf



Exhibit G.pdf

August 20, 2018

Mr. Scott Neal
Code Enforcement Officer
Town of Poland
1231 Maine Street
Poland, Maine 04274

***Re: Douglas Wight, 108 Legendre Lane / Denial of Application for
Shoreland Project Permit***

Dear Mr. Neal:

I represent Doug Wight, who resides at 108 Legendre Lane in West Poland (hereafter the "Property"). By your letter dated July 19, 2018,¹ you denied Mr. Wight's application for a Shoreland Project Permit to replace the permanent dock that is affixed to the shore of the Property (hereafter the "Permanent Dock").² I understand that you asked Mr. Wight to apply for that permit after you received a copy of a Permit by Rule (hereafter "PBR") from the Maine Department of Environmental Protection (hereafter the "DEP") which authorized Mr. Wight to replace the Permanent Dock.³

If necessary, Mr. Wight will file a timely appeal from your decision to the Board of Appeals. However, it is my policy, when I perceive that a Code Enforcement Officer has made a good-faith error in rendering a decision on a permit, to contact him or her to attempt to resolve the matter short of an appeal. That policy seems especially appropriate in this case, where you went to the trouble of consulting with DEP Shoreland Zoning Coordinator Colin Clark before denying the permit.

¹ A copy of your correspondence of July 19, 2018 is attached to this letter as Exhibit A.

² A copy of Mr. Wight's Shoreland Project Permit application is attached to this letter as Exhibit B.

³ In 2018 Mr. Wight received two PBRs from the Maine DEP. The first of those PBRs authorized the replacement of 50% of the Permanent Dock. The second of those PBRs approved Mr. Wight's proposal to replace the Permanent Dock completely. Those PBRs are attached to this letter as Exhibits C and D, respectively.

August 20, 2018

Page 2

A. Background.

Mr. Wight purchased the Property in 2000.⁴ At that time, the Permanent Dock was already present on the shore of the Property. According to Mr. Wight's neighbors, the dock was built no later than the early 1940's.

In 2000, the Permanent Dock had the following appearance:



Figure 1

Side View of Permanent Dock in 2000

⁴ See Deed from Normand D. St. Hilaire and Joanne St. Hilaire, Trustees to Douglas D. Wight et al, dated September 11, 2000 and recorded at the Androscoggin County Registry of Deeds at Book 4507, Page 246, a copy of which is attached to this letter as Exhibit E.

August 20, 2018

Page 3

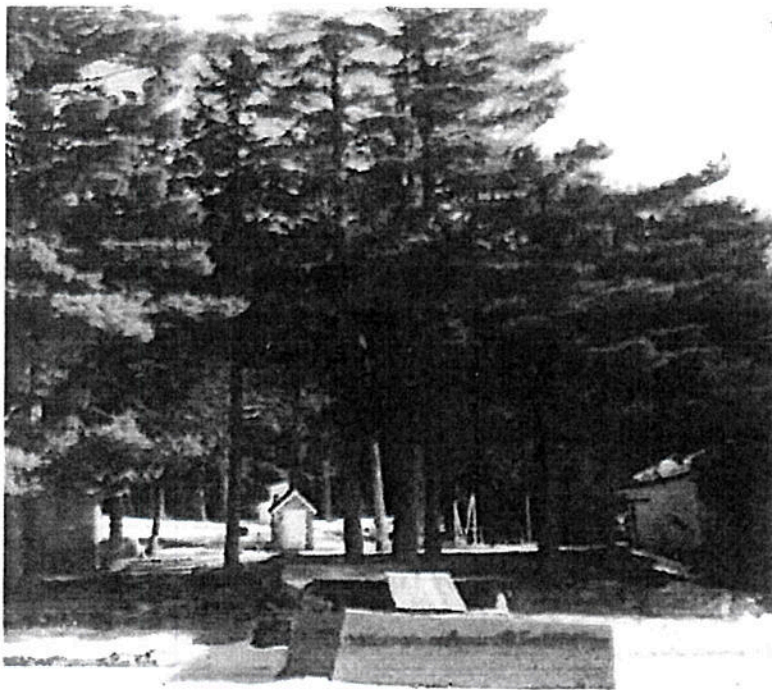


Figure 2
Lake View of Dock in 2000

Figures 1 and 2 above show that, in 2000, the Permanent Dock was in poor condition. It is also significant that, at that time, the Permanent Dock was supported by *two* large concrete cribs: one in the middle, and one at the end.

Because the Permanent Dock was in such ill repair, on October 2, 2000, Mr. Wight filed with the Maine DEP a PBR Notification Form seeking, among other things, approval to “repair/*replace* existing dock” pursuant to DEP Rules Chapter 305, § 4.⁵ That PBR (hereafter the “2000 PBR”) was deemed approved as of October 16, 2000. By necessary implication, the DEP found that the proposed replacement of the Permanent Dock

⁵ A copy of the 2000 PBR is attached to this letter as Exhibit F.

August 20, 2018

Page 4

conformed to the Town of Poland's Shoreland Zoning regulations.⁶ DEP Rules Chapter 305, § 4(A)(7). The 2000 PBR stated that "[t]he DEP will send a copy [of the PBR Notification Form] to the Town Office as evidence of the DEP's receipt of notification."

The 2000 PBR was, on its face, valid for a period of two years. Mr. Wight finished the replacement of the Permanent Dock within that period. The Town was sent a copy of the 2000 PBR, and the former Code Enforcement Officer was aware of Mr. Wight's replacement of the Permanent Dock. During the nearly two years during which Mr. Wight was replacing the Permanent Dock, the former Code Enforcement Officer never informed Mr. Wight that the replacement of the Permanent Dock violated any provision of the Town of Poland Comprehensive Land Use Code (hereafter the "CLUC"), nor did he require Mr. Wight to apply for or obtain a Shoreland Project Permit for that work.⁷

While replacing the Permanent Dock in 2000, Mr. Wight removed the concrete crib that had been in the middle of the Permanent Dock. Thereafter, the Permanent Dock had the following, simplified profile:

[space deliberately left blank]

⁶ DEP Rule 305, § 4(A)(7) provides that the PBR for the replacement of structures "does not apply to an activity that will not conform to the local shoreland zoning ordinance." Accordingly, by approving the 2000 PBR (as well as the 2018 PBRs), the DEP necessarily found that the proposed replacement of the Permanent Dock *did* conform to the shoreland zoning provisions of the Town of Poland CLUC.

⁷ Because neither an abutter nor the Town appealed from the DEP's approval of the 2000 PBR, the DEP's implicit determination that the project complied with the Town's shoreland zoning regulations is final and binding on both the Town and the Maine DEP. *See, e.g., Town of Boothbay v. Jenness*, 2003 ME 50, ¶ 21, 822 A.2d 1169, 1175; *Crosby v. Belgrade*, 562 A.2d 1228, 1230, (Me. 1989) *Town of North Berwick v. Jones*, 534 A.2d 667, 671 (Me. 1987); *Maines v. Secretary of State*, 493 A.2d 326, 329 (Me. 1985). However, in this letter, I will focus on why the reasoning set forth in your decision to deny Mr. Wight's permit was substantively incorrect.

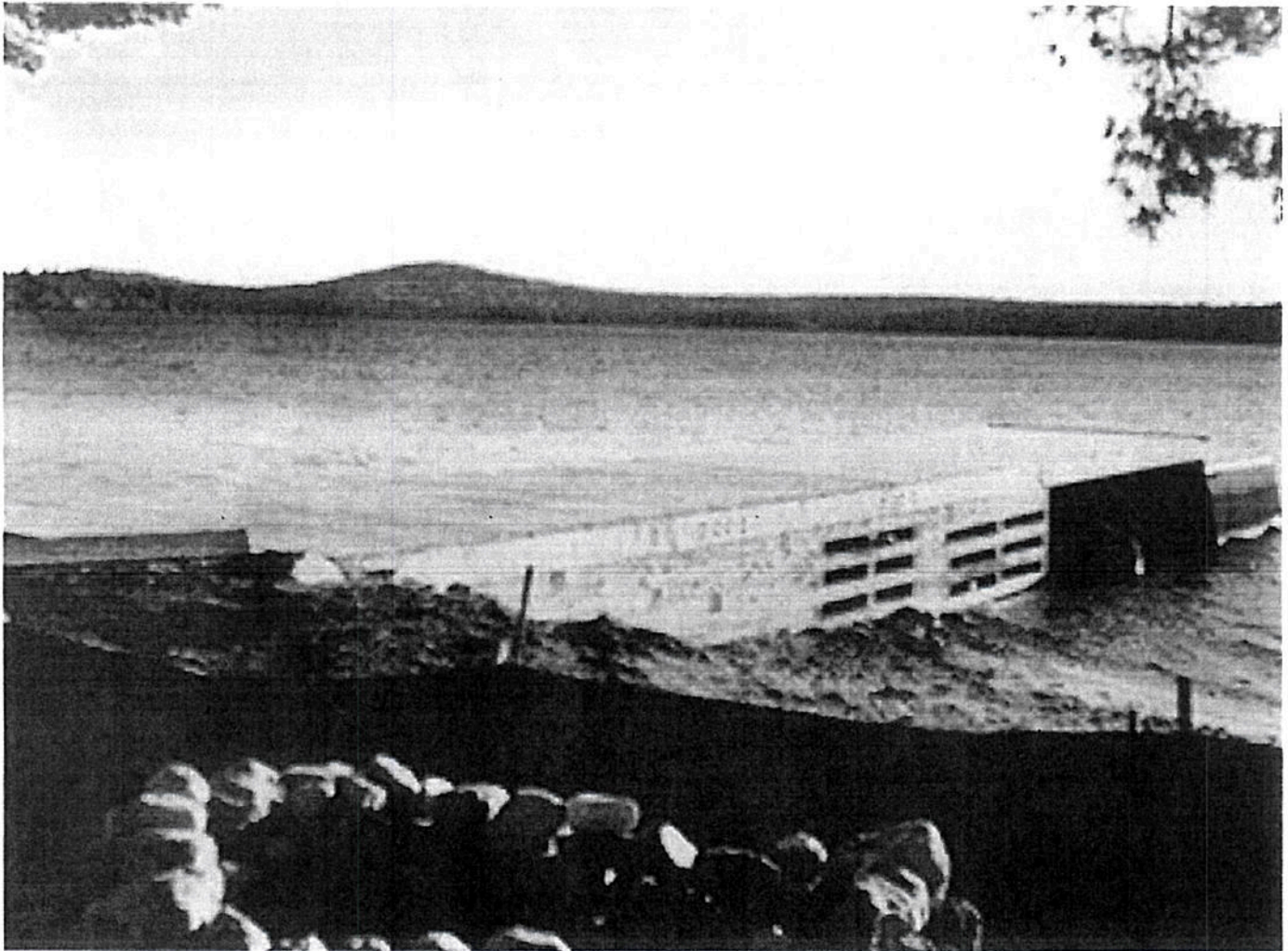


Figure 3

Side View of Permanent Dock After Replacement in 2002, Showing Removal of Middle Concrete Crib That Appears in Figure 1 Above.

Unfortunately, the Permanent Dock was severely damaged in the series of ice storms that struck Maine in March, 2018. It was reduced to the condition shown in the following photograph:



Figure 4
Side View of the Dock in 2018

Although the concrete crib at the end of the Permanent Dock was undamaged, and the large supporting boulder just inland of the concrete crib remained in place, much of the wooden structure of the Permanent Dock collapsed.

As a result, Mr. Wight filed with the Maine DEP two more PBR notification forms: one dated April 9, 2018, which sought approval to repair and “replace” approximately half of the Permanent Dock;⁸ and second, dated May 9, 2018, in which Mr. Wight amended the April 9, 2018 PBR “to allow full replacement of permanent dock. The damage was more substantial than I expected.”⁹ Those 2018 PBRs were deemed approved on April 23, 2018 and May 23, 2018, respectively.

⁸ A copy of the April 9, 2018 PBR is attached to this letter as Exhibit C.

⁹ A copy of the May 9, 2018 PBR is attached to this letter as Exhibit D.

August 20, 2018

Page 7

The Town appealed from neither of those PBRs.¹⁰ Instead, you verbally informed Mr. Wight that he needed to apply for a Shoreland Project Permit in order to replace the Permanent Dock. You did not inform Mr. Wight that you considered the replacement of the Permanent Dock illegal or that you would be unable to grant the permit. Although Mr. Wight did not believe he actually needed a Shoreland Project permit from the Town, as a courtesy to you, he applied for one on June 11, 2018.

Under CLUC § 303.2(A), within 14 business days after the submission of an application for a building or use permit (including Shoreland Project permits) the Code Enforcement Officer is required either to approve, deny, or refer the application to the Planning Board. Assuming that Mr. Wight filed his application on June 11, 2018, you would have had until June 29, 2018 to reach a decision on his application. You let that deadline pass.

On July 10, 2018, you sent an e-mail to Colin Clark, the Shoreland Zoning Coordinator for the Maine DEP, noting that the DEP had issued to Mr. Wight the 2018 PBRs authorizing a full replacement of the Permanent Dock and asking, "would a full replacement of a permanent dock be allowed under Maine Shoreland Zoning rules?" Mr. Clark replied as follows:

Hey Scott thanks for contacting me about his issue of replacing a permanent dock in a lake. The PBR issued by Dustin under the NRPA is only valid if the project is approved locally it does not mean that you should approve the project under SLZ. SLZ rules state that:

New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

Therefore they would need to demonstrate that a temp dock is not feasible which would not be likely if another kind of dock is. In this case if they remove the existing dock by more than 50% the PB should be requiring a temp dock instead of a permanent one.¹¹

¹⁰ For the same reasons stated in footnote 7 of this letter, the Town and DEP are both collaterally estopped from contending that the replacement of the Permanent Dock either violated the CLUC or required a Shoreland Project Permit.

¹¹ A copy of the e-mail exchange between Colin Clark and you, including your e-mail forwarding that exchange to Mr. Wight, is attached to this letter as Exhibit G.

August 20, 2018

Page 8

However, the CLUC does not contain the language Mr. Clark quoted. Nothing in the CLUC requires a permanent dock, of which more than 50% is destroyed, to be replaced only by a temporary dock.

Nonetheless, on July 19, 2018, you sent Mr. Wight your letter denying his application for a Shoreland Project Permit to replace the Permanent Dock. In that letter, you gave the following reasons for denying Mr. Wight's application:

Any nonconforming structure in the Limited Residential shoreland district removed by more than 50% and rebuilt would be considered a new structure. The Poland Land Use Code (CLUC) Table 508.27.A § 17-B shows that new permanent docks are not allowed in the Limited Residential District.

I understand you to be saying that because (a) the complete replacement of a *nonconforming structure* would create a "new" *structure*; (b) a new *nonconforming structure* is allowable only if it serves a *permitted use* in the Limited Residential District; and (c) new permanent docks are not expressly permitted in the Limited Residential District; therefore Mr. Wight cannot legally construct a new permanent dock.

I respectfully disagree. On one hand, it is true that, under CLUC § 508.27(A), Table 508.27(A)(17)(B), a *new* permanent dock that is unrelated to an existing dam is not currently a permitted use in the Limited Residential District. However, the CLUC expressly allows the replacement of a nonconforming *use* so long as that use is neither (a) *discontinued for a period of more than one year* or (b) *superseded by a conforming use*. CLUC § 504.4(B). It contains no exception for situations in which the *structure* that is devoted to that nonconforming use is destroyed either in whole or in part. Because neither of the events listed in CLUC § 504.4(B) has occurred in this case, Mr. Wight is plainly authorized to replace his Permanent Dock as a *nonconforming use*.

It is understandable that you might become confused while trying to understand the critical difference between how nonconforming *uses* on one hand, and nonconforming *structures* on the other, are regulated under the CLUC, the DEP's Guidelines for Municipal Shoreland Zoning Ordinances (hereafter the "Guidelines")¹², and decisions of the Maine Supreme Judicial Court (hereafter the "Law Court"). However, I am compelled to alert you

¹² Although 38 M.R.S. § 436-A contains a definition of the term "structure," neither it nor any other section of the Mandatory State Shoreland Zoning Act, 38 M.R.S. § 435 et seq., defines the terms "*nonconforming structure*," "*nonconforming use*," or any other type of nonconformity. Those terms are defined by (a) § 17 of the Guidelines, as authorized by 38 M.R.S. § 438-A, and (b) CLUC § 1402. Because the definitions of those terms contained in CLUC § 1402 are identical to those found in § 17 of the Guidelines, for the sake of brevity I will, henceforth in this letter, refer only to the definitions of those terms contained in CLUC § 1402.

August 20, 2018

Page 9

that you have erroneously applied, to a nonconforming *use*, regulations that apply, if at all, only to nonconforming *structures*.

B. The Differences in the Definitions of “Nonconforming Structure” and “Nonconforming Use.”

The Maine Law Court has held that where a zoning ordinance separately defines the terms “nonconforming use” and “nonconforming structure,” those concepts are *not* interchangeable. In such a case, the municipality cannot apply regulations limiting changes to nonconforming uses to nonconforming structures, or vice versa. *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905.

Under CLUC § 1402, the terms “nonconforming structure” and “nonconforming lot” are indeed defined separately and distinctly. A nonconforming *structure* is defined as follows:

A structure which does not meet any one or more of the following *dimensional requirements: setback, height, lot coverage or footprint*, but which is allowed solely because it was in lawful existence at the time this Code or subsequent amendments took effect.

(emphasis added) In contrast, a “nonconforming use” has the following definition:

Use of buildings, structures, premises, land or parts thereof *which is not permitted in the district in which it is situated*, but which is allowed to remain solely because it was in lawful existence at the time this Code or subsequent amendments took effect.

Not every nonconforming use is a nonconforming structure, and the reverse is true as well. For example, a single family house constructed in the 1950s would be a legally nonconforming *structure* in the Limited Residential District if it exceeded the maximum impervious surface ratio of 15% set forth in CLUC § 507.2(G)(4), the maximum height of 35' established in CLUC § 507.2(G)(5), or the minimum principal structure setbacks listed in CLUC § 507.2(G)(6). However, those dimensional nonconformities would not render the house a nonconforming *use*. Under CLUC § 508.27(A), Table 508.27(A)(15)(A), single family residences are expressly allowed in the Limited Residential District with Planning Board approval.

The only district in which a single-family residence is a prohibited use, and could therefore constitute a legally-nonconforming *use*, is the Resource Protection Zone. (*Id.*) However, that circumstance does not render every residence located in the Resource Protection Zone a nonconforming *structure*. So long as the residence complies with all

“setback, height, lot coverage or footprint” standards applicable to residences in the Resource Protection, it is a conforming *structure* even though it is a nonconforming *use*.

In the present case, the Permanent Dock is a legally “nonconforming use” as defined by the CLUC. It has that status because, although permanent docks are not a currently-permitted use in the Limited Residential Zone, the Permanent Dock was legally built on the Property decades before the Town enacted regulations prohibiting that use. However, it is not true, nor did you assert in your letter of July 19, 2018, that the Permanent Dock is a nonconforming *structure*. The Permanent Dock violates none of the “setback, height, lot coverage or footprint” requirements of the CLUC applicable to docks, whether permanent or temporary.

Because the Permanent Dock is a nonconforming *use* rather than a nonconforming *structure* as defined in CLUC § 1402, you cannot, under *Oliver v. City of Rockland*, apply to the Permanent Dock restrictions that apply only to the replacement of nonconforming *structures*. Moreover, even if the CLUC regulations governing replacement of nonconforming *structures* applied to the facts of this case, the CLUC does not provide that a structure damaged by more than 50% of its market value is to be treated as a “new” structure.

C. Why Your Interpretation of the CLUC is Mistaken.

- 1. The CLUC allow the replacement of a legally nonconforming use so long as it is neither discontinued for more than one year nor superseded by a conforming use.**

Nothing in the CLUC prevents Mr. Wight from completely replacing the nonconforming *use* of his Property for a Permanent Dock. The only restraint on the replacement of a legally nonconforming *use* is that contained in CLUC § 504.4(B)¹³:

Resumption Prohibited - A lot, building or structure in or on which a legal nonconforming use is *discontinued for a period exceeding one (1) year*, or which is *superseded by a conforming use*, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to one (1) year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes at any time during the preceding five (5) year period.

¹³ Because Mr. Wight is proposing neither to expand the Permanent Dock nor to change that use, the restrictions in CLUC §§ 504.4(A) and (C) applying to expansions and changes to nonconforming uses do not apply here.

Neither Mr. Wight nor his predecessors in title have ever discontinued the use of the Permanent Dock, or substituted for it a temporary dock, for *any* length of time, let alone a year. Moreover, the Permanent Dock can and will be replaced in far less than a year. Under these circumstances, CLUC § 504.4(B) expressly *allows* Mr. Wight to replace his Permanent Dock as a legally nonconforming *use*. Indeed, CLUC § 504.4(B) does not even require him to obtain a permit from the Town to do so.

2. The CLUC allows the replacement of a nonconforming Permanent Dock even if it is destroyed by more than 50% of its market value.

Assuming, for the sake of argument, that the Permanent Dock met the definition of a nonconforming *structure*, the extent to which nonconforming structures in the Shoreland Zone may be reconstructed or replaced is governed by CLUC §§ 504.2(A) and 504.3(D). The former section provides, in pertinent part, as follows:

Repair and Maintenance - This Chapter allows the normal upkeep and maintenance of legal nonconforming uses and structures including repairs or renovations which do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, and local building and safety Codes may require. Such repair and maintenance shall comply with the Town of Poland Building Code.

Because Mr. Wight (a) proposes the normal upkeep and maintenance of his Permanent Dock required after it was severely damaged by ice during the past winter; (b) will not expand the Permanent Dock, and (c) will replace the Permanent Dock in compliance with all applicable Codes, CLUC §§ 504.2(A) does not prohibit his replacement of the Permanent Dock even if it were a nonconforming structure that had been damaged by more than 50% of its market value.

The only other limitation on the reconstruction or replacement of nonconforming *structures* that could conceivably apply to the circumstances of this case is the introductory sentence to CLUC § 504.3(D). That sentence provides that “in no case shall a structure be reconstructed or replaced so as to increase its nonconformity.” However, because the replacement Permanent Dock would be precisely the same dimensions as the existing one, Mr. Wight’s replacement of his Permanent Dock cannot “increase its nonconformity.”

August 20, 2018

Page 12

3. **The sections of the CLUC that limit replacement of structures that are nonconforming to the shoreline setback do not apply to the Permanent Dock.**

It appears that both you and Mr. Clark were thrown off course by CLUC §§ 504.3(D).

On one hand, it is true that CLUC §§ 504.3(D)(1) places limits on an owner's ability to replace a nonconforming structure that is *both* (a) damaged by more than 50% of its market value *and* (b) located "less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland." However, under CLUC § 508.27(B)(1)(a), the minimum shoreline setbacks *do not apply* to docks and other functionally water-dependent uses:

The water body, or tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

Because the Permanent Dock does not violate any minimum setback from the water, CLUC § 504.3(D)(1) does not prevent Ms. Wight from replacing his nonconforming Permanent Dock, even if (a) it were considered a nonconforming *structure* and (b) has been damaged or destroyed by more than 50% of its market value.

In short, there is simply no provision within the CLUC providing that if a Permanent Dock that constitutes a legally nonconforming *use* is destroyed by more than 50% of its market value, it therefore becomes a "new" use that must comply with all current use regulations in the Ordinance. That could happen only if the Permanent Dock had a *nonconforming minimum setback from a water body* – which, under CLUC § 508.27(B)(1)(a), is impossible as a matter of law.

CONCLUSION

For the above reasons, I respectfully request that you rescind your letter of July 19, 2018 and issue the requested Shoreland Project permit immediately, and in any event before the deadline by which Mr. Wight must appeal your denial letter to the ZBA.¹⁴

¹⁴ As noted above, there is no express requirement that Mr. Wight obtain a permit to replace a dock that is a legally nonconforming use. However, as an accommodation to the Town, Mr. Wight is willing to obtain such a permit as a gesture of good faith.

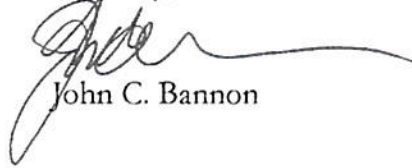
August 20, 2018

Page 13

If you have any questions about this letter, please feel free to contact me.

Thank you for your assistance. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Bannon", with a long horizontal flourish extending to the right.

John C. Bannon

JCB/kpm

Enclosures

cc: Douglas Wight (w/enc)



Message

Fri, Aug 24, 2018 6:42 PM

From: "Natalie L. Burns" <nburns@JBGH.com>

To: Scott Neal

Subject: RE: Letter Concerning Denial of Doug Wight's Application for a Shorela...

Scott,

I have reviewed the various materials provided concerning Mr. Wight's application to replace his nonconforming permanent dock located at 108 Legendere Lane. Mr. Wight's attorney, Mr. Bannon, makes several arguments concerning your communication to Mr. Wight that he would be required to go to the Planning Board because the replacement would be more than 50% of the existing dock under the provisions of Section 504.3.D.1.b of the CLUC. Mr. Bannon argues that this provision does not apply because the dock is not a nonconforming structure, as defined in the CLUC. This is an interesting question because the dock is both a structure and a use. Even if the dock were not considered a nonconforming structure, a position with which I do not agree, it would still have to be considered as a nonconforming use since it is not allowed under the provisions of 508.27.A.17.B.

If the dock is treated as a nonconforming use, it is subject to Section 504.4 of the Code. There is nothing in this section that allows someone to remove a structure and completely replace it in order to recreate a nonconforming use. The Ordinance allows the resumption of a nonconforming use under certain circumstances, but that would be tied in this case to the existing structure since the dock as a use cannot exist without the structure. The removal of the structure is also the removal of the use and surrenders any claimed right of grandfathering.

Section 504.1 sets forth the intent of the Chapter "to promote land use conformities, except that legal nonconforming conditions that existed before the effective date of this Chapter shall be allowed to continue, subject to the provisions" of the Code. Section 504.2.B establishes that "normal upkeep and maintenance of legal nonconforming uses and structures including repairs and renovations which do not involve the expansion of the nonconforming use or structure..." Again, there is nothing in this provision that extends to the reconstruction of a structure for a nonconforming use.

The second issue raised in Mr. Bannon's letter is that the DEP's issuance of the Permit By Rule necessarily determined that the application met the requirements of the Town's shoreland zoning requirements and precludes the Town from reviewing that determination. While Section 305.4.A.(7) of the DEP rules state that the replacement provisions of the PBR standards "do not apply to an activity that will not conform to the local shoreland zoning ordinance," the Rules also contain a Note that reads "Contact the local Code Enforcement Officer for information on local shoreland zoning requirements." It is clear from this Note that the Rules do not confer upon the DEP the legal authority to make a shoreland zoning determination or impose an obligation upon a municipality to appeal a PBR that does not comply with the municipality's shoreland zoning regulations. Further, State law is very clear that municipalities are responsible for adopting and enforcing shoreland zoning regulations. See 38 M.R.S.A. Section 438-A. While the State retains certain oversight over shoreland zoning by municipalities, that oversight does not extend to issuing permits that override the requirement for municipal review of a regulated activity.

Finally, it is important to note that this does not mean that Mr. Wight cannot have a dock. It simply means that he must replace the nonconforming permanent dock with a conforming temporary dock if

the permanent dock is removed.

Please let me know if you have any questions.

Thanks,

Natalie

Natalie L. Burns, Esq.

Jensen Baird Gardner & Henry

Ten Free Street

P.O. Box 4510

Portland, Maine 04112-4510

207-775-7271 or 800-756-1166

Fax: 207-775-7935

nburns@jbgh.com

www.jbgh.com



From: Scott Neal [mailto:sneal@polandtownoffice.org]

Sent: Monday, August 20, 2018 8:24 PM

To: Natalie L. Burns

Subject: Fwd: Letter Concerning Denial of Doug Wight's Application for a Shoreland Proje

Natalie,

Could you review this as well

Thanks,

Scott Neal

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

Dear Scott:

EXH1511 7

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
PERMIT BY RULE NOTIFICATION FORM
 (For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY (3 COPIES, PLEASE BEAR DOWN)

Name of Applicant: Candace/Douglas Wight		Name of Owner: same	
Mailing Address: 64 Laws Brook Rd		Town/City: Concord	
State: Mass	Zip Code: 01742	Daytime Telephone No: (978) 371-2478	
Name of Wetland, Water Body or Stream: Thompson Lake			
Detailed Directions to Site: From Rte 11 West Poland, North on N. Raymond Rd, North on Meggier Hill Rd, Left onto Legendre Lane (F.L.5) #108 Cedar Shakes & white trim			
Town/City: W. Poland	Map #: 23	Lot #: 689	County: Androscoggin
Description of Project: Repair/replace existing dock, CONSTRUCT/REPAIR EXISTING FOUNDATION. REMOVE ~250'SQ BLACKTOP. PLANT TREES, SHRUBS, GROUND COVER. REMOVE ONE TREE. IMPROVE SHORELINE STABILIZATION.			
Part of a larger project?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

(CHECK ONE) This project: does ☒ does not ☐ involve work below mean low water.

I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Regulation, Chapter 305. I have a copy of PBR Sections checked below. I have read and will comply with all of the standards.

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Sec. (2) Soil Disturbance
<input type="checkbox"/> Sec. (3) Intake Pipes
<input checked="" type="checkbox"/> Sec. (4) Replacement of Structures
<input type="checkbox"/> Sec. (5) REPEALED
<input checked="" type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation
<input type="checkbox"/> Sec. (7) Outfall Pipes | <input checked="" type="checkbox"/> Sec. (8) Shoreline stabilization
<input type="checkbox"/> Sec. (9) Utility Crossing
<input type="checkbox"/> Sec. (10) Stream Crossing
<input type="checkbox"/> Sec. (11) State Transportation Facilities
<input type="checkbox"/> Sec. (12) Restoration of Natural Areas
<input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | <input type="checkbox"/> Sec. (14) Piers, Wharves & Pilings
<input type="checkbox"/> Sec. (15) Public Boat Ramps
<input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects
<input type="checkbox"/> Sec. (17) Transfers/Permit Extension
<input type="checkbox"/> Sec. (18) Maintenance Dredging |
|--|--|--|

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that **this permit is not valid until approved by the Department or 14 days after receipt by the Department, whichever is less.**

I have attached all of the following required submittals. NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS:

- ☐ **Attach** a check for \$50 (non-refundable) made payable to: "Treasurer, State of Maine".
- ☐ **Attach** a U.S.G.S. topo map or Maine Atlas & Gazetteer map with the project site clearly marked.
- ☐ **Attach** photographs showing existing site conditions (unless not required under standards).

Signature of Applicant: <i>Candace Wight</i>	Date: Oct 2, 2000
--	-------------------

Keep the bottom copy as a record of permit. Send the form with attachments via certified mail to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. **Work carried out in violation of any standard is subject to enforcement action.**

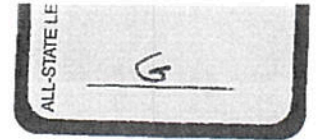
AUGUSTA DEP
 STATE HOUSE STATION 17
 AUGUSTA, ME 04333-0017
 (207)287-2111

PORTLAND DEP
 312 CANCO ROAD
 PORTLAND, ME 04103
 (207)822-6300

BANGOR DEP
 106 HOGAN ROAD
 BANGOR, ME 04401
 (207)941-4570

PRESQUE ISLE DEP
 1235 CENTRAL DRIVE
 PRESQUE ISLE, ME 04769
 (207)764-0477

OFFICE USE ONLY	Ck.#	Date	Staff	Staff	After Photos
PBR #	FP		Acc. Date	Def. Date	



----- Forwarded Message -----

From: Scott Neal <sneal@polandtownoffice.org>

To: "d_d_wight@yahoo.com" <d_d_wight@yahoo.com>

Sent: Wednesday, July 18, 2018, 9:50:38 AM EDT

Subject: Fwd: RE: Permanent Dock Replacement

Douglas,

I have forwarded you an email I received from Colin Clark from the DEP below. Because the dock is a non-conforming structure if you rebuild it more than 50% it's considered a new dock. In table 508.27.A / Land Uses in the Shoreland Area number 17 B of the Poland Comprehensive Land Use Code new permanent docks are not allowed. If you would like to pursue the 50% reconstruction of the dock it will have to go through the Planning Board. I can't permit the reconstruction of a non-conforming structure without Planning Board approval within 100' of the shore. If you would like to make an appointment I can walk you through the Planning Board application process.

Scott Neal

Code Enforcement Officer

Town of Poland

sneal@polandtownoffice.org

(207) 998-4604

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

Scott Neal

Code Enforcement Officer

Town of Poland

<mailto:sneal@polandtownoffice.org>

(207) 998-4604

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

Message Wed, Jul 11, 2018 2:44 PM

From: "Clark, Colin A" <<mailto:Colin.A.Clark@maine.gov>>

To: Scott Neal View in Browser

Cc: "Dorr, Dustin" <<mailto:Dustin.Dorr@maine.gov>>

Subject: RE: Permanent Dock Replacement

Hey Scott thanks for contacting me about his issue of replacing a permanent dock in a lake. The PBR issued by Dustin under the NRPA is only valid if the project is approved locally it does not mean that you should approve the project under SLZ. SLZ rules state that:

New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

Therefore they would need to demonstrate that a temp dock is not feasible which would not be likely if another kind of dock is. In this case if they remove the existing dock by more than 50% the PB should be requiring a temp dock instead of a permanent one.

Hope this clears this issue up a bit. If you have further questions don't hesitate to contact me.

Take care

Colin A. Clark

Shoreland Zoning Coordinator in the Bureau of Land Resources

Maine Department of Environmental Protection

Tel (207) 441-7419

www.maine.gov/dep

From: Scott Neal [<mailto:sneal@polandtownoffice.org>]

Sent: Tuesday, July 10, 2018 12:11 PM

To: Clark, Colin A <Colin.A.Clark@maine.gov>

Subject: Permanent Dock Replacement

Colin,

I'm working with a home owner Douglas Wight on 108 Legendre Ln. in Poland. They have applied for a permit to totally replace a permanent dock. They did receive a PBR #65791 from Dustin Dorr for the full replacement. My question is would a full replacement of a permanent dock be allowed under Maine Shoreland Zoning rules.

Thanks,

Scott Neal

Code Enforcement Officer

Town of Poland

sneal@polandtownoffice.org

(207) 998-4604

September 18, 2018

VIA E-MAIL AND FEDEX

Mr. Mark Hyland
Chair
Town of Poland Board of Appeals
Town of Poland
1231 Maine Street
Poland, Maine 04274

***Re: Administrative Appeal by Douglas Wight, 108 Legendre Lane, from
Denial of Application for Shoreland Project Permit***

Dear Chair Hyland:

I represent Doug Wight, who resides at 108 Legendre Lane in West Poland (hereafter the "Property"). I submit this letter in support of Mr. Wight's administrative appeal from the letter of the Code Enforcement Officer (hereafter the "CEO"), dated July 19, 2018, denying Mr. Wight's application for a Shoreland Project Permit to fix his permanent dock.¹

A. This Case Is Simpler Than It Initially Looked.

When I prepared my letter to the CEO dated August 20, 2018, I had incorrectly assumed that Mr. Wight had already removed his damaged dock from the Property. I was under the misimpression that Mr. Wight's dock no longer existed and needed to be completely replaced in order for Mr. Wight to have any dock at all. For that reason, in my letter of August 20, 2018, I did not focus as closely as I might have on CLUC §504(2)(B). That regulation provides as follows:

¹This letter is intended to supplement, rather than replace, Mr. Wight's letter to the Board dated August 30, 2018. In addition, on August 20, 2018, I sent to CEO Neal a letter presenting detailed arguments why his denial of the Shoreland Project Permit reflected a mistaken interpretation of the CLUC. That letter, along with its exhibits, is already included in your packet. Rather than repeat the arguments set forth in my August 20th letter and thereby make this letter longer than it is, I incorporate those arguments by reference in this correspondence and request that the Board members review my August 20th letter as though it had been addressed to them.

Repair and Maintenance - This Chapter allows the normal upkeep and maintenance of legal nonconforming uses and structures *including repairs or renovations which do not involve expansion of the nonconforming use or structure*, and such other changes in a nonconforming use or structure as Federal, State, and local building and safety Codes may require. Such repair and maintenance shall comply with the Town of Poland Building Code.

In fact, as the following photographs taken on August 8, 2018 confirm, the dock has not been substantially altered since it was damaged by the ice storms of March, 2018:



Figure 1
Left² Side View of the Dock at Present

² As viewed from the shore.



Figure 2
Right³ Side View of the Dock at Present

³ As viewed from the shore.

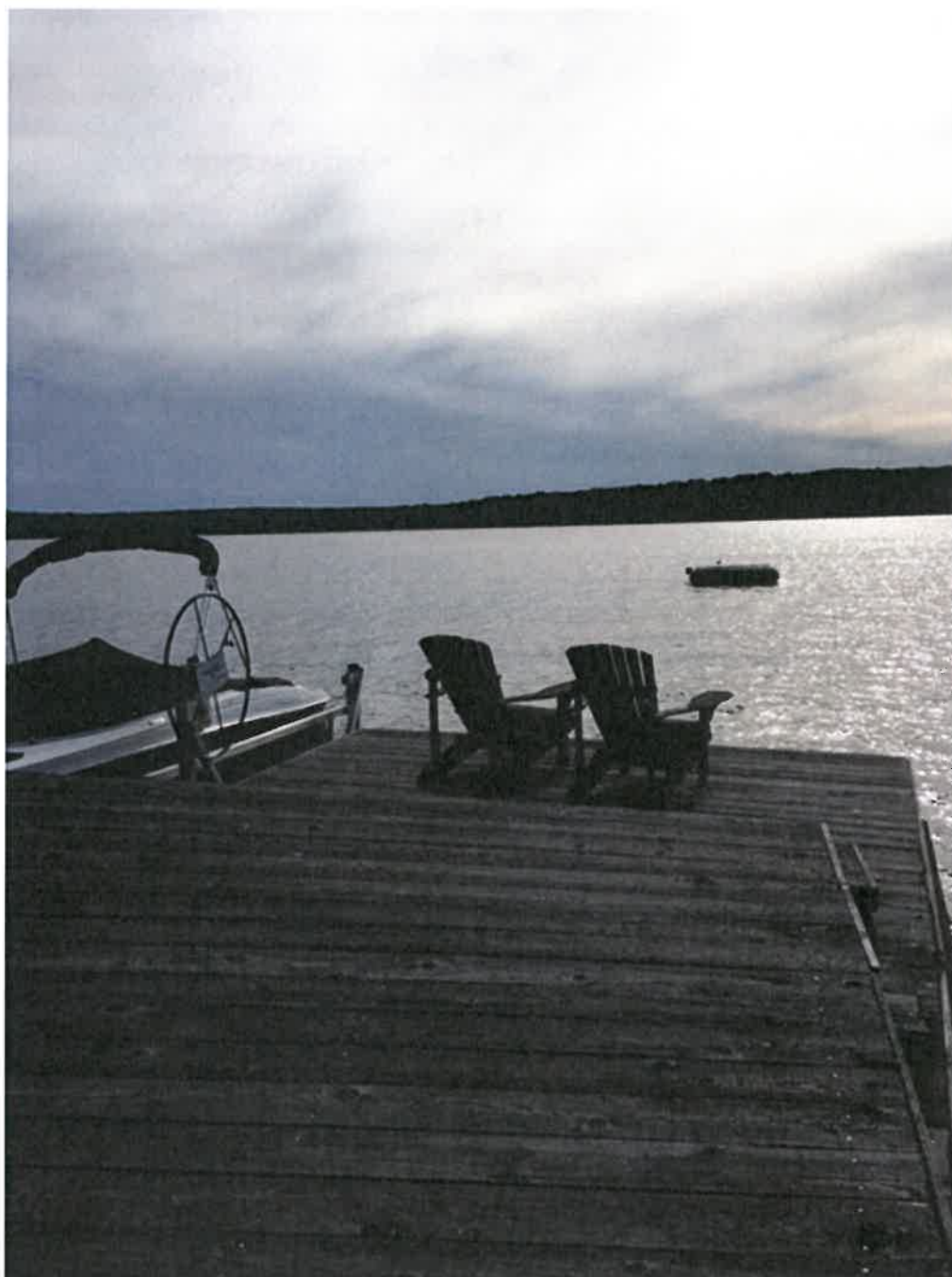


Figure 3
View Towards the End of the Dock at Present

The foregoing photographs demonstrate that Mr. Wight has taken no actions that could cause him to waive his right to maintain a legally nonconforming permanent dock. He has thus far removed no portion of the dock, and proposes no changes to the concrete pier at

the end of the dock – the feature which, as a practical matter, allows the dock to be permanently installed. Mr. Wight only seeks a permit to *repair* the wooden portions of the dock that were damaged in the ice storms of March, 2018.

In this context, it is important to review the CLUC § 1402 definition of “repair:” “To take necessary action to *fix* normal damage *or storm damage*.” (emphasis added) Common experience tells us that when a wooden structure suffers “storm damage,” “fixing” that damage almost always involves the replacement of damaged wood with new wooden members. Indeed, it may require the complete rebuilding of a wooden structure in order to continue the use of that structure.

CLUC § 504(2)(B) does *not* provide that the reconstruction of a nonconforming use or structure cannot constitute a “repair or renovation” of that use.⁴ The drafters of CLUC § 504(2)(B) demonstrated their ability to place limits on the repairs and renovations authorized by that ordinance by expressly providing that such activities must not “involve *expansion* of the nonconforming use or structure.” CLUC § 1402 provides specific definitions of the term “expansion” in the context of both nonconforming structures and nonconforming uses:

Expansion of a Structure: An increase in the footprint or height of a structure including all extensions such as, but not limited to, attached decks, garages, porches and greenhouses.

Expansion of Use: The addition of one (1) or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

Mr. Wight's nonconforming *use* of his dock consists solely of his maintaining it “permanently” rather than “temporarily.”⁵ Because he does not propose to add one or months to that use's operating season or to use more footprint or ground area occupied by the dock, the work described in his applications for a Shoreland Project Permit cannot

⁴ It should be recalled that Mr. Wight does not plan to remove or replace the concrete pier that supports the end of the permanent dock. Thus, Mr. Wight is not proposing the complete removal and replacement of his existing nonconforming dock in any event.

⁵ Under CLUC § 1402, the definitions of a “temporary” versus a “permanent” dock have no reference to how the dock is designed or built. If a dock – however it is constructed – remains in or over the water for less than seven (7) months in any period of twelve (12) consecutive months, it is considered a “temporary dock.” If a physically identical dock is left in the water for seven (7) months or more in any period of twelve (12) consecutive month, it is deemed a “permanent dock.”

constitute an “expansion” of that use.⁶ Because Mr. Wight intends to make no “expansions” to his permanent dock as defined by CLUC § 1402, he does not trigger the only limitation on his ability to “repair or renovate” that dock expressly set forth in CLUC § 504(2)(B).

Moreover, it is critical to note that CLUC § 504(2)(B) authorizes not only the “repair” of nonconforming use and structures, but also their “renovation.” Because the term “renovation” is not specifically defined in CLUC § 1402, then under CLUC § 1401, it is to be given its “ordinarily accepted meaning.”

The Merriam-Webster Dictionary definition of “renovate” is “to restore to a former better state (as by cleaning, repairing, or *rebuilding*).” (emphasis added) <https://www.merriam-webster.com/dictionary/renovate>. Another common definition of “renovate” is “to restore to good condition; *make new or as if new again*; repair.” (emphasis added) <https://www.dictionary.com/browse/renovation>. Indeed, the meaning of the word “renovate” is derived from the Latin words (a) “re-”, which means “again,” and (b) “novare,” which means “make new.” <https://www.vocabulary.com/dictionary/renovation>. Therefore, when, in order to make a damaged nonconforming use “new again,” it is necessary to rebuild it substantially, such work is expressly authorized by CLUC § 504(2)(B).

In sum, Mr. Wight’s project falls exactly within the scope of CLUC §504(2)(B) because:

- a. CLUC §504(2)(B) allows “the normal upkeep and maintenance of legally nonconforming uses and structures, including *repairs* or *renovations* which do not involve expansion of the nonconforming use or structure...;(emphasis added)
- b. the permanent dock is an existing, legally nonconforming use;
- c. Mr. Wight proposes no “expansion” of his legally nonconforming permanent dock as defined by CLUC § 1402;
- d. the work for which Mr. Wight seeks a Shoreland Project Permit is a “repair” as defined in CLUC § 1402 because it is a “necessary action to fix...storm damage;” and
- e. that work also constitutes a “renovation” of the dock within the ordinarily accepted meaning of that term.

⁶Although the nonconforming permanent dock is not a nonconforming structure, even if it was, Mr. Wight seeks to increase neither the footprint nor the height of that dock.

Thus, it is actually unnecessary to navigate the entire maze of CLUC provisions governing changes to nonconforming uses and structures, as the CEO did in his letter of July 19, 2018 and I did in my letter of August 20, 2018. Mr. Wight is allowed to replace the damaged portions of his legally nonconforming permanent dock use simply because CLUC §504(2)(B) and the definitions of “repair” and “renovation” plainly authorize that work.

B. The More Complicated Approach: A Reply to the Town Attorney’s Opinion of August 24, 2018.

Town Attorney Natalie Burns responded to the arguments raised in my August 20, 2018 letter in an e-mail to the CEO dated August 24, 2018. Although Part A of this letter is sufficient to demonstrate that Mr. Wight’s appeal should be granted, for the sake of completeness, in Part B of this letter I will reply to the Town Attorney’s comments:

1. *“Mr. Bannon makes several arguments concerning your communication to Mr. Wight that he would be required to go to the Planning Board because the replacement would be more than 50% of the existing dock under the provisions of Section 504.3.D.1.b of the CLUC.”*

That is not actually what my arguments are about. The only reasoning of the CEO that Mr. Wight is obligated or authorized to challenge on this appeal is the reasoning actually contained in the CEO’s July 19, 2018 letter. In that letter, the CEO denied the permit only on the following grounds:

Any nonconforming structure in the Limited Residential shoreland district removed by more than 50% and rebuilt would be considered a new structure. The Poland Land Use Code (CLUC) Table 508.27.A § 17-B shows that new permanent docks are not allowed in the Limited Residential district.

In conclusion and pursuant to Ch.5, Table 508.27.A § 17-B of the CLUC, this office has denied your application.

Although, in an e-mail to Mr. Wight dated July 18, 2018, the CEO referenced possible Planning Board review of a greater-than-50% reconstruction of a nonconforming structure, the CEO did not mention such a procedure in his denial letter of July 19, 2018. Therefore the possibility of Planning Board review and/or the relevance of CLUC § 504.3(D)(1)(b) are not germane to Mr. Wight’s administrative appeal.

Even if the CEO had cited that issue in his denial letter of July 19, 2018, Planning Board review of a greater-than-50% replacement of a nonconforming *structure* pursuant to CLUC § 504.3(D)(1)(b) would be inapplicable to Mr. Dwight’s application for a Shoreland Project Permit, for two reasons. First, as I explained on page 12 of my August 20, 2018

letter, CLUC § 504.3(D)(1)(b) applies only to *structures* that violate the *minimum shoreline setback*. Under CLUC § 508.27(B)(1)(a), docks are exempt from the minimum shoreline setback because they are functionally water-dependent uses. Second, even if CLUC § 504.3(D)(1)(b) were potentially applicable, it would not affect the CEO's actual ground for denying Mr. Wight's permit: namely, his opinion that the reconstruction of a nonconforming dock *structure* by more than 50% would create a new permanent dock *use* that would be prohibited by CLUC Table 508.27.A § 17-B.

I have already shown the inaccuracy of the CEO's reasoning on this point in my letter to the CEO dated August 20, 2018. To quote just one paragraph from page 8 of that letter:

On one hand, it is true that, under CLUC § 508.27(A), Table 508.27(A)(17)(B), a *new* permanent dock that is unrelated to an existing dam is not currently a permitted use in the Limited Residential District. However, the CLUC expressly allows the replacement of a nonconforming *use* so long as that use is neither (a) *discontinued for a period of more than one year* nor (b) *superseded by a conforming use*. CLUC § 504.4(B). It contains no exception for situations in which the *structure* that is devoted to that nonconforming use is destroyed either in whole or in part. Because neither of the events listed in CLUC § 504.4(B) has occurred in this case, Mr. Wight is plainly authorized to replace his Permanent Dock as a *nonconforming use*.

2. *"If the dock is treated as a nonconforming use, it is subject to Section 504.4 of the Code. There is nothing in this section that allows someone to remove a structure and completely replace it in order to create a nonconforming use."* (emphasis added)

The Town Attorney is correct that the permanent dock is a legally nonconforming use that is subject to CLUC § 504.4. However, the second sentence quoted above misses Mr. Wight's point. Mr. Wight contends that his proposed repairs and/or renovations to his nonconforming permanent dock (a) are intended to fix and renew a nonconforming *use*, not a nonconforming *structure*; and (b) do not "*create*" any *new* nonconforming use, but rather preserve an *existing*, legally nonconforming use.

With all due respect, like the CEO, the Town Attorney has asked the wrong question. The question to be answered on this appeal is not whether the CLUC allows a person to remove a structure, replace it, and thereby – as the Town Attorney put it -- "*create*" a nonconforming use. The pertinent question is this: "does the CLUC provide that Mr. Wight's repair or renovation of his legally nonconforming permanent dock causes him to *lose* his existing grandfathered right to *use* a permanent dock? Based on the following CLUC regulations, the answer to that question is, "no":

- Under CLUC § 504.1, “It is the intent of this Chapter to promote land use conformities, *except that legal nonconforming conditions that existed before the effective date of this Chapter shall be allowed to continue*, subject to the requirements set forth in this Section. (emphasis added)
- Under CLUC § 504.2(a), “Legal nonconforming...*uses* may be transferred, and the new owner may *continue* the nonconforming *use* or continue to use the nonconforming structure or lot, subject to the provisions of this Code. (emphasis added)
- Under CLUC § 504.2(b), “This Chapter allows the normal upkeep and maintenance of legal nonconforming *uses* and structures including *repairs or renovations which do not involve expansion of the nonconforming use* or structure, ...

The only provision of the CLUC that causes a property owner to lose his or her right to maintain an existing nonconforming *use* is § 504.4(B):

Resumption Prohibited - A lot, building or structure in or on which a legal nonconforming use is *discontinued for a period exceeding one (1) year*, or which is *superseded by a conforming use*, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to one (1) year extension to that time period. ...

Mr. Wight has never discontinued his use of his nonconforming permanent dock, nor has that use ever been superseded by a conforming use. Accordingly, § 504.4(B) establishes that removing a structure and replacing it, by itself, does *not* cause a property owner to forfeit the right to maintain an *existing* nonconforming *use*. Removing and replacing a nonconforming permanent dock cannot have that effect unless the property owner *also* either (a) ceases to use and maintain the permanent dock for more than one year or (b) allows the permanent dock nonconforming use to be superseded by a conforming use: namely, the operation of a dock on a “temporary” basis. Because Mr. Wight has not and will not allow his use of the permanent dock to be discontinued or superseded, his lawful repair of storm damage caused to his permanent dock cannot cause him to lose his lawful nonconforming use of that permanent dock.

Here again, the CEO and the Town Attorney seem not to recognize that a dock’s *physical structure* plays no role in determining whether it is, or is not, a nonconforming *use*. The only factor that distinguishes a conforming dock from a nonconforming dock is *how*

long it is left in the water. Under CLUC § 1402, a “dock”⁷ is defined merely as a “structure that remains in or over the water.” Moreover, under that definition, a “temporary dock” is defined only as any structure that remains in or over the water “for less than seven (7) months in any period of twelve (12) consecutive months,” while a “permanent dock” is simply any structure that remains in or over the water “for seven (7) months or more in any period of twelve (12) consecutive months.” If two physically identical docks are placed side by side, the *only* circumstance that would allow an observer to determine whether either of those docks is a conforming use versus a nonconforming use is whether that dock is left in the water for less than, or more than, 7 months in any 12-month period. In short, whether a dock is a legally nonconforming *use* has nothing to do with the nature of the dock *structure*; what is “grandfathered” is the property owners’ right to leave *any* dock in the water for more than 7 out of 12 consecutive months.

3. *Section 504.2.B establishes that “normal upkeep and maintenance of legal nonconforming uses and structures including repairs and renovations which do not involves the expansion the nonconforming use or structure... Again there is nothing in this provision that extends to the reconstruction of a structure for a nonconforming use.”*

In the first sentence of the foregoing quote, the Town Attorney accurately quotes CLUC § 504(2)(B). However, the Town Attorney’s interpretation of that ordinance, in the second sentence of the above quote, is mistaken.

As I have explained already in Part A of this letter, CLUC § 504(2)(B), when read in connection with the definition of “repair” in CLUC § 504(2)(B) and the ordinary meaning of the word “renovation,” clearly and unambiguously authorizes the rebuilding of a structure to support a nonconforming use, as long as that nonconforming use is neither (a) expanded, (b) discontinued for a period of more than a year, nor (c) superseded by a conforming use. Because Mr. Wight requested a Shoreland Project Permit to do no more than is expressly authorized by CLUC § 504(2)(B), the CEO erred in denying his application for that Permit.

4. *“The [DEP] Rules do not confer upon the DEP the legal authority to make a shoreland zoning determination or impose an obligation on a municipality to appeal a PBR that does not comply with the municipality’s Shoreland Zoning regulations. See 38 M.R.S.A. Section 438-A.”*

Notwithstanding the conclusion just quoted, the Town Attorney concedes that “Section 305.4.A(7) of the DEP Rules state that the PBR standards ‘do not apply to an

⁷ The same definition applies to “piers, . . . wharves, bridges, and other structures extending over or beyond the normal high water line or within a wetland.” CLUC § 1402.

activity that will not conform to the local shoreland zoning ordinance.” The fact that the shoreland zoning laws are primarily enforced by municipalities does not change the DEP’s obligation to ensure, *before* it issues a PBR, that the activity will comply with the Town’s shoreland zoning regulations. If the activity does not comply with the local shoreland ordinance, the DEP cannot approve the PBR in the first place. Even if the DEP itself lacked jurisdiction to “make a shoreland zoning determination,” it could simply ask the local CEO, who automatically receives copies of all PBR notification forms, to report whether the PBR would violate the local shoreland zoning ordinance.

However, that the DEP does have authority to make shoreland zoning determinations is confirmed by 38 M.R.S. § 443-A(1):

Consultation with state agencies. All agencies of State Government shall cooperate to accomplish the objectives of this [shoreland zoning] article. To that end, the [DEP] commissioner shall consult with the governing bodies of municipalities and with other state agencies to achieve the purposes of this article, and shall extend to municipalities all possible technical and other assistance for that purpose.

If it cannot offer interpretations of the shoreland zoning laws, the DEP would be of little or no assistance to municipalities. Moreover, municipal shoreland zoning ordinances may be enforced not only by the municipal officers and CEO, but also by the Maine Attorney General and the district attorney. 38 M.R.S. § 444.

In any event, the DEP Rules require that the municipality be sent a copy of all permit applications, including those for PBRs. 38 M.R.S. § 480-E(1). The PBR notification form itself recites that “The DEP will send a copy to the Town Office as evidence of the DEP’s receipt of notification.” (*See* Exhibits C, D, and F to letter from J. Bannon to S. Neal dated August 20, 2018). Because the municipality has an opportunity to object to or appeal from the PBR, its failure to file such an objection or appeal prevents the municipality from challenging the grant of the PBR in the future.

Accordingly, the Maine DEP’s issuance of the 2000 PBR, and the Town’s failure to appeal from that decision or to notify the DEP that Mr. Wight’s replacement of the permanent dock was prohibited by the CLUC, bars the Town from now contending that the 2000 PBR was erroneous or that the rebuilding of an existing permanent dock is prohibited by the CLUC. (*See* footnotes 6 and 7 to letter from J. Bannon to S. Neal dated August 20, 2018).

September 18, 2018

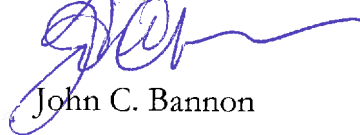
Page 12

CONCLUSION

For the foregoing reasons, in addition to those set forth in Mr. Wight's letter to the Board dated August 30, 2018 and my letter to CEO Neal dated August 20, 2018, I respectfully request the Board of Appeals to grant Mr. Wight's appeal and to reverse the CEO's decision of July 19, 2018 denying Mr. Wight's application for a Shoreland Project Permit.

Thank you for your patience and attention to this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "JCB", with a long horizontal flourish extending to the right.

John C. Bannon

JCB/kpm

cc: Mr. Doug Wight