

**Board of Appeals Meeting
October 16, 2019 – 7:00 PM
Town Office Conference Room**



Meeting Materials

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October 16, 2019 – 7:00 PM
Town Office Conference Room**

AGENDA

CALL TO ORDER

MINUTES

October 3, 2018

APPEALS

Administrative Appeal – Marla Dodie Rosenthal and Michael Rosenthal
– 45 Garland Swamp Road – Map 32 Lot 8

ADJOURNMENT

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CALL TO ORDER – Chairperson Mark Hyland called the meeting to order at 7:00pm with Members Gerard Bowes, Lou Ann Lancaster, Code Enforcement Officer Scott Neal, and Recording Secretary Sarah Merrill present. Members Joseph Radziszewski, Jr and Stanley Tetenman absent with notice.

MINUTES – Member Bowes moved to approve the minutes for June 4, 2018. Member Lancaster seconded the motion. Discussion: None Vote: 3-yes 0-no

COMMUNICATIONS – None

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

- **Douglas Wight and Andrea Blunt are present and being represented by John Bannon, Esq.**
- **Conflict of interest among members of the Board:** Chairperson Mark Hyland asked if any members of the Board have a conflict of interest. The Board members all said they don't have any conflicts of interest.
- **Standing:** Member Bowes made a motion that the Wight's have standing because they have had a permit denied by the Code Enforcement Officer. Member Lancaster seconded the motion.
Discussion: None Vote: 3-yes 0-no
- **Right, title, and legal interest by the Applicant:** Member Bowes made a motion that the Wight's have right, title, and legal interest by way of deed. Member Lancaster seconded the motion.
Discussion: None Vote: 3-yes 0-no
- Thank you, Mr. Chair and Members of the Board, I'm John Bannon of Murray Plumb and Murray here representing Doug Wight on this appeal. I know as the Chairman said you have to have a really good case to persuade three people on the appeals board to grant an appeal. I respectfully submit

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that this is that really good case. I'm saying this not to brag, but just as a point of fact that I have been practicing land use law for thirty-seven years and I have worked with the shoreland zoning ordinance for all that time. I've seen lots of decisions that were close, a lot of decisions where I wasn't sure of my position, but this is a case where I simply cannot find any support for the determination made by the Code Enforcement Officer. I have tried, but all signs within the ordinance point in the direction that Mr. Wight is entitled to his permit because there is nothing about renovating a structure that supports a nonconforming use and causes you to lose that nonconforming use. That's the question that's really before the Board tonight. Is there anything in your ordinance that causes Mr. Wight to be unable to have a permanent dock anymore simply because he wants to repair and renovate one that was damaged by the storm. I've already subjected you to many pages of text and typing and so forth. I will try to make this perhaps slightly more stimulating by turning this into a question and answer format where fortunately I ask the questions and answer them, so you don't have to worry about any of that. I think it might help things flow better and be more interesting than the letter.

- I have a series of questions, I think eight or nine of them, and I will try to go through them as quickly as I can. Question 1) What does the ordinance generally say about the continuation of nonconforming uses? That again is our target here. When does a nonconforming use have end or what can make it end? The principal provisions of the ordinance are §504.1 which provides that legal nonconforming conditions which includes nonconforming uses that existed before the effective date of this chapter shall be allowed to continue so that the requirements set forth in this section. So, the premise is that nonconforming conditions, although not allowed to expand, are allowed to continue as they were. So that's our grounding principal in this §504.1.
- §504.2A is similar providing that legal nonconforming uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot as subject to the provisions of this code. So, the ordinance is saying when the property

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changes hands grandfathered rights go with the land to the new owner. These are rights that the ordinance respects and ought to recognize in subsequent owners.

- The most important provision in the ordinance, in my opinion, is the one I focused on in the part of a more recent letter that said this case isn't really that hard is in §504.2B. I respectfully submit that the Board focuses on this section of the ordinance and then is able to exclude things that don't really contradict it. It leads inevitably to the conclusion that Mr. Wight is entitled to repair his dock which was destroyed through no fault of his own, and to restore it as a permanent dock, which is the nonconforming use. §504.2B says in pertinent part "This chapter allows the normal upkeep and maintenance". I won't try to argue that what Mr. Wight is trying to do is just ordinary upkeep and maintenance as I think that might be a stretch. But it goes on to say, "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". So, we know from this section that a property owner that has a nonconforming use such as a permanent dock is allowed to repair it and is allowed to renovate it without losing his nonconforming use rights. The one thing he can't do is expand it and that's the limitation that §504.2B puts on the landowner's rights. But that's not what Mr. Wight is proposing here. He's not proposing to make this dock any bigger, any taller, or any different from what it's been for the last seventy plus years. The overall point that I'm making is that §504.2B must lead this Board to the conclusion that Mr. Wight can go forward.
- Some of the questions I'm going to ask myself are pretty simple such as this one: Question 2) Is Mr. Wight's permanent dock a legal nonconforming use? Yes. Why is that? The ordinance defines a nonconforming use as follows "It' a use of buildings, structures, premises, or parts thereof which is not permitted in the district in which it is situated". The Code Enforcement Officer is completely right in interpreting the land use table as showing that permanent docks are not a permitted use in any of the shoreland zones. That is true, we would stipulate to that. We are talking about a use that is

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not permitted. But the definition goes on to say that “a nonconforming use is allowed to remain because it was in lawful existence at the time this code or subsequent amendments took effect”. This dock according to my clients and I imagine the testimony will be reinforced by other people in the audience, has been that this dock has been in existence since the 1940’s. It was actually at one point bigger than it is now. It’s actually smaller than it was in its earlier days. The State shoreland zoning act wasn’t enacted until 1971. I don’t know when the Town of Poland enacted it’s first shoreland zoning ordinance, but it couldn’t have been before 1971 because the law didn’t even exist. So, because this permanent dock, and it was built as a permanent dock, has been in lawful existence since before the ordinance declared it to be not permitted it is a legally nonconforming use under the definitions of your ordinance.

- Question 3) Is Mr. Wight proposing to repair or renovate his nonconforming use within the meaning of §504.2B? Yes, he is preparing to repair or renovate his nonconforming use within the meaning of that section. The ordinance within §1402 defines repair as follows “To take necessary action to fix normal damage or storm damage”. And I want to emphasize storm damage in that definition of repair. Storm damage doesn’t tend to be slight; it tends to be pretty consequential. From the outset §1402 is allowing property owners to fix storm damage. We all know fixing an old wooden structure that’s been damaged by the storm you wind up using new wood in there and rebuilding parts of it or rebuilding all of it. Does that make it something other than a repair? No, not under the ordinance. Repair means taking every action to fix the storm damage and that is what Mr. Wight is proposing. There is another channel there which I would like to focus on: that the property owner is allowed to renovate his or her nonconforming use. That term isn’t defined in your ordinance, so it’s given its common dictionary meaning or ordinary meaning. I have provided in my letters three definitions of the term renovate. They include “to restore to a former better state as by cleaning, repairing, or rebuilding”. So that’s one common meaning of renovate that includes rebuilding. Another common definition is “to restore to good condition, make new, or as if new again repair”. That is more than patching things up a little bit. That includes a substantial

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change to the structure. As we all think about a renovation to a historic building where there will be very consequential changes in that sort of work. And the word itself is derived, to be fancy, from some Latin which means to make new again. This is one of the words that is used in your ordinance and it is something that Doug is allowed to do. He is allowed to renovate his nonconforming use which is the dock that is expressly authorized by §504.2B.

- Questions 4) Is Mr. Wight proposing to expand his nonconforming dock use? And the reason I ask that question is that as I said earlier that is the only limitation in §504.2B which a lot owner is not allowed to do. He or she cannot expand a nonconforming use while in the process of repairing or renovating it. So, is what Mr. Wight is proposing an expansion of his nonconforming use? No. Fortunately the ordinance has definitions of both the expansion of a structure and the expansion of a use. I am more concerned with the definition of the expansion of a use because that's what we were really talking about. But to the extent that anyone is inclined to think about structures the definition of expansion of a structure is "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". Mr. Wight is proposing nothing like that. He is proposing to reproduce the historical permanent dock that has always been there. So, there is no expansion of a structure. Way more importantly is the definition of expansion of use because that is the only thing that Doug is prohibited from doing. That definition in your ordinance is "an expansion of use is the addition of one or more months to a uses operating season or the use of more structure or ground area devoted to the particular use". Here too Mr. Wight is not proposing that. He is proposing to make the structure exactly the same size as it has always been. I don't know whether a dock can have a footprint under the definition of footprint in your ordinance, but we'll just paraphrase that as size. He's not making it any longer, or any wider, it's shadow on the lake is not increasing at all, there's no greater ground area going to it, and he isn't proposing to add any more months of use to it. This brings me to a point that I think is easy to miss and needs to be kept really carefully in mind. The distinction between a temporary dock and a

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permanent dock under your ordinance has nothing to do with how a dock looks or how a dock is built. It has only to do with the number of months it is left in the water. Period. So, I am referring to this dock as a nonconforming use and that nonconforming use is its permanency not the structure. It's the fact that he's using it seven or more months in a twelve month period. So that is why we should not be looking at, although it is a structure of course in ordinary terms, what's critical for Mr. Wight is whether his can continue and that use is the permanency of his use. Again, that doesn't depend at all on how the dock looks. He could put in a tiny little dock and leave it in eight months of the year, and it would be a permanent dock. He could put in a gigantic dock and take it out every three months and it would be temporary dock. So how it looks has nothing to do with it. It's only the time it's left in the water. Mr. Wight isn't proposing to change that at all. He's also not expanding the use of the dock.

- Question 5) This is a section that came up in the Town Attorney's opinion/letter and perhaps in some other places and it §504.3.D.1. it seems as though some people have been placing a significant amount of emphasis on that or giving it special importance. That's the section of the ordinance places some emphasis, and I would stress some, on reconstruction or replacement of some, and I would again emphasize some, nonconforming structures in a shoreland zone. So, question 5 as I've put it is does §504.3.D.1. have anything to do with this case? My answer is no, and this is why. First of all §504.3.D.1. is talking about nonconforming structures. We're not here tonight to try and preserve a nonconforming structure. The reason the permit was denied was because the Code Enforcement Officer said it was a nonconforming use that could not be renewed. So §504.3.D.1. is irrelevant because it deals with structures rather than uses. But even if you wanted to go there, and this is one of the parts I don't understand about this case, §504.3.D.1. applies only to structures in the shoreland zone that are nonconforming to the setback from water bodies. I didn't read the ordinance that's what the ordinance says and §504.3.D.1. expressly limits the applicability of that section to structures that are less than the required setback from a waterbody. Are docks subject to a setback from a waterbody? No. Under §508.27.B.1.a of the ordinance it is said expressly

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that the minimum waterbody setbacks do not apply to piers, docks, and other functionally dependent water uses. So §504.3.D.1. doesn't apply at all here. We're talking about a use and or structure that has no water setback. If it isn't nonconforming to a water setback then §504.3.D.1. doesn't apply. So, I submit respectfully and sincerely, that I don't think it has anything to do with this appeal or the issues raised.

- Question 6) Even if §504.3.D.1. does apply, does anything in that section say that the owner of a nonconforming structure that is put to nonconforming use will lose his or her nonconforming use if he or she reconstructs the structure? The answer is no it doesn't say anything like that. For one thing §504.3.D.1.a. doesn't even apply because a structure isn't subject to a waterbody setback, but what would happen if it were and simply that if you had a nonconforming structure that's less than the required setback and it's destroyed by more than 50% of its market value it may be reconstructed or replaced provided a permit is obtained within one year from the date of damage or destruction and provided such reconstruction or replacement is in compliance with the waterbody setbacks to the greatest practical extent. That section doesn't say tearing down or reconstructing even a nonconforming structure makes you forfeit a nonconforming use. This section literally says nothing about nonconforming uses. It certainly does not say that this kind of reconstruction causes a nonconforming use to lapse. So that this provision §504.3.D.1.a. does not support the Code Enforcement Officer's decision.
- Question 7) And I think this is a real important question is: is there any section of the ordinance that does cause a property owner to lose his or her rights to maintain a nonconforming use? The answer is yes, but there's only one provision that does that. That is §504.4.B. We're not looking for things by implication were looking for plain language in the ordinance that says when a property owner can lose his or her nonconforming use. §504.4.B. says "A lot, building or structure in or on which a legal nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use". This is really consistent with the laws on nonconforming uses in lots of context.

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Normally the rule is that if you stop using/discontinue a nonconforming use for a year you lose it. This is sort of the standard fair and that's what this section says. If it's discontinued for a period exceeding one year then you use your right to maintain it as a legal nonconforming use. Doug has not done that. He has not discontinued the permanent use of his dock at all. The second circumstance in which you can lose nonconforming uses is that you allow them to be superseded by a conforming use. Mr. Wight hasn't done that either. He hasn't constructed a temporary dock in place of the permanent dock. He hasn't even removed the remains of the permanent dock as I showed you in the pictures. So no conforming use has superseded the nonconforming use of this dock as a permanent dock. But even if he blew it by discontinuing the use for a period more than one year or allowing it to be superseded by a conforming use he could still go to the planning board and for good cause shown get a one year extension of that time to continue the nonconforming use. That's how protective this ordinance is of nonconforming uses. That's how this ordinance works in terms of nonconforming uses. I can't emphasize how important this the question in this case is: does anything that Mr. Wight is proposing cause him to lose to retain a nonconforming use? This section tells you that the only circumstances that will do that and neither of them apply.

- Question 8) Is there any section of the ordinance that says the following "any nonconforming structure in a limited residential zone removed by more than 50% and rebuilt will be considered a moved structure"? Those are the exact words the Code Enforcement Officer used in his denial of the permit. The answer is those words are nowhere in this ordinance. There are no ordinance provisions which if you add them together or try to interlock them will get you to this sentence. The decision is that any nonconforming structure, we're talking about uses here not structure, removed by more than 50% and rebuilt would be considered a new structure. No, they're not. They're considered still grandfathered existing structures. The second part of the Code Enforcement Officer's reasoning was because in his view reconstructing this dock would make it a new dock and a new permanent dock is not permitted in the zone and he can't permit it. But that's not what's happening here. Mr. Wight is not creating a new dock. It's the same

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dock that's being rebuilt and unless he has done one of the two things to cause nonconforming uses to lapse it remains a permanent dock. Nothing in what the Code Enforcement Officer's decision said has any support in the ordinance with all due respect. I've looked and I cannot find it.

- To sum up let's go back to the simplest way to analyze this case, let's go back to §504.2B. Was what Mr. Wight is proposing authorized by that section? Yes. Why? Because firstly, §504.2B allows normal upkeep, repairs, and renovations which do not involve expansion of the nonconforming use or structure. That's allowed. It's there in plain English that you're allowed to engage in repairs or renovations on nonconforming uses without losing them. Secondly, Mr. Wight's permanent dock is an existing legal nonconforming use because it's existed since the 40's. Next Mr. Wight is proposing no expansion of his legal nonconforming use, which is the permanency of use, there's no expansion of that. The work for which Mr. Wight was seeking a permit is a repair as defined under your ordinance because it is necessary action to fix storm damage or it constitutes renovation of the dock within the ordinarily accepted meaning of that term. That's it. The question before you is: is there anything that Mr. Wight is proposing that would cause him under this ordinance, the plain language of this ordinance, to forfeit his right to keep a dock in the water more than seven months of the year? And I respectfully submit that it's not and for that reason I would respectfully ask the Board to grant the appeal.
- Chairperson Hyland thanked Mr. Bannon and asked Mr. Wight if he had anything further.
- Mr. Wight said he did. I want to just share a little of my personal history and give my perspective here outside the legal aspects. I came to know the property in 2000. I came to look down Legendre Lane because there was a property on the market, that the St. Hilaire's were putting on the market. I was awed by the fabulous view, the beautiful clean lake, but one thing in particular that stood out to me was this permanent dock that was there. To me that presented an extreme value to the property and something I could engage with my family, at the time three boys ages 11, 9, and 6. I was

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enthralled with the property. I came back at a later point in time to talk with the existing owner and I brought my children along and I asked permission to see if they would be allowed to swim while I had a talk with the owner and looked at the property. Mr. St. Hilaire, the prior owner said absolutely go ahead, and the kids played in the water, they ran on the dock, they went swimming, and they just enjoyed it. So, it was a vital piece to me, it's an extremely valuable asset that I want to retain and continue because it's a part of the property. About five years later after I purchased the property in 2000, I had a family reunion going on. Mr. Norm St. Hilaire came back to take a look at the property. I gave him a tour though the house and he looked upon a couple pictures of my kids jumping off the dock and stopped and told me when he had an opportunity to sell the house, I had many offers. When I saw your kids jumping off the dock, swimming, and enjoying it that's what turned his decision to sell it to me because he wanted to have that dock continue on with a family to enjoy it. For me personally that's my goal to retain that extreme value for my kids and their kids so they can enjoy it. I just want to share a little bit of personal history that I think is relevant to what I'm looking to do.

- Chairperson Hyland asked if there was anyone else who wanted to speak.
- Andrea Blunt, Doug's partner spoke next. I want to acknowledge that many of us in the room, maybe most of us in the room are here because we love Thompson Lake and want to protect it. I want to give a shout out to all of the neighbors that are here to support us which feels really good. Also, to speak to some of the things that Doug, and I think that he's been a really great steward of the lake and when he purchased the property and did the landscaping he consulted with Phoebe Hardesty on how to do that so runoff didn't go into the lake and the results of that planning are terraced gardens, rain gardens, and diverters in the driveway etc. It became a model garden that phoebe Hardesty would bring people to show them what was a good example of how to protect the lake. So that's little history about how much we care about the lake. The other point I want to make I feel like there's been a little confusion about why we use the word replacement and maybe that's lead us down some of this path. I want to clear that up

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because I have the prospective on it. We initially were calling it a repair and it became a replacement on the advice of our contractor. And mostly what I think he was looking at was when we applied for the DEP permit, he wanted to make sure that we were as broad as possible so that when the DEP approved it, we had the latitude that we needed. You'll see from your documents that we did get DEP approval. I know he didn't really think, as John did a great job outlining, that because this was a grandfathered or nonconforming use that there would be any issues. And neither did we. I think we were a little naïve I think part of our naivete is that in Poland on Thompson Lake we definitely have seen where people have done complete replacements of nonconforming structures in the shoreland zone. Those have never been considered new and disallowed. So we were surprised that this standard was being put on our dock when it doesn't get put on homes that are rebuilt and yet our dock is subject to this standard. I think that was part of our feeling that we had no reason to think that there would be an issue here. So, I echo what Doug has said about the value of this dock. We get a lot of enjoyment out of it, we know it adds value to our property, and it's something we would really like permission to continue. Thank you.

- Chairperson Hyland asked if the Board had any questions.
- Chairperson Hyland said he has looked at the pictures and also the design the contractor is proposing. Is there any difference in the footprint here? It looks to him like he's filled in areas that are currently open. Am I missing something there?
 - Mr. Wight states that it's the same structure except that there's no step down to the concrete blocking level end in the new design. The reason is because he feels this design is going to be stronger and will be able to resist the ice.
 - Chairperson Hyland asked how that works. Is he going to build up that concrete on the end?
 - Mr. Wight stated that right now it tiers down and they'll have it go straight out.

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- Ms. Blunt stated the only difference is that he plans to put big pins/ supports into the boulder in the center as shown in the pictures.
 - Chairperson Hyland asked for a picture of the dock. He's looking at the dock in the letter of the 18th and it looks like it peaks in the middle and goes back down and he's not understanding.
 - Mr. Wight stated that's the damage caused by the ice.
 - Member Bowes had some specific questions about a picture. Ms. Blunt and Mr. Wight went up to Member Bowes to show him portions of the dock in answer to his questions.
- Member Bowes asked why they would want to rebuild the dock like that because they're going to have ice every winter and why they wouldn't want to look at something different.
 - Mr. Wight stated that they have looked at other designs, but none were more satisfactory, and they couldn't get it in there.
- Chairperson Hyland asked if the dock design submitted by their contractor is exactly like the dock from 2002.
 - Mr. Wight stated that it's similar, but the biggest difference is where they'll drill into the rock for support.
 - Chairperson Hyland asked for specifics and Mr. Wight went up and showed him on a picture what changes would be made. Mr. Wight stated that it would be the same dimensions as it is now.
- Chairperson Hyland asked Mr. Bannon to go back to §504.3.D.1.
 - Mr. Bannon stated that is the section he thinks isn't applicable here.
 - Chairperson Hyland stated that this is a nonconforming structure.
 - Mr. Bannon disagrees.
 - Chairperson Hyland stated that the Town of Poland doesn't allow permanent docks in the lake.
 - Mr. Bannon stated that is a nonconforming use.
 - Chairperson Hyland stated that it's a nonconforming structure too because we don't allow them.
 - Mr. Bannon disagrees and states that there is nothing about the structure that violates any dimensional standards.

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- Chairperson Hyland stated that the mere existence of the structure in the lake violates the dimensional standards.
 - Mr. Bannon disagrees and reads the definition of a nonconforming structure. “Nonconforming Structure: 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”. Mr. Bannon then lists how the dock doesn’t meet the requirements.
 - Chairperson Hyland stopped Mr. Bannon on the footprint requirement and stated that was how the dock isn’t allowed.
 - Mr. Bannon stated that a footprint is defined as area on the ground, it doesn’t talk about area over the water.
 - Chairperson Hyland stated that it’s not on the water but is a permanent structure on the ground in the water because the concrete pier that hold that dock up and the big crib work underneath the other side is all footprint resting on ground in the water.
 - Mr. Bannon stated that that footprint isn’t going anywhere no matter what the Board decides which is why turning this down doesn’t make any sense.
 - Mr. Bannon stated he knows their supposed to be concerned about damage to the lake floor and that’s what the point of this is, but the concrete pier and rock are already there. No one is creating any more impacts on the footprint. He also stated that the during their ownership of the property they have removed some of the footprint of the dock.
- Member Bowes stated that he respects the decision of the Code Enforcement Officer and thinks that it’s purely based upon the chart where it states it’s not allowed. However, because it’s been there for 80 years and its storm damage then it’s repairing and restoring what was already there.
 - Chairperson Hyland stated that if they were repairing it he wouldn’t have a problem. His problem with this is taking the whole thing out and replacing it with another nonconforming structure. His example

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was if someone had a house five feet from the lake they would make them move it back and this Board has done that dozens of times.

- Mr. Bannon stated that unlike a house a dock is not subject to the waterbody setback. Mr. Bannon stated that this is a renovation to make the dock as new again as allowed in the code.
- Mr. Bannon and Chairperson Hyland engaged in their earlier conversation about whether this is a nonconforming structure.
- Chairperson Hyland asked the Code Enforcement Officer if he had any questions.
 - Code Enforcement Officer (CEO) Neal stated that it looked to him as if there had been a previous change already where the dock was expanded.
 - Mr. Wight stated there had been some changes, but no expansion of the dock. Mr. Wight and Ms. Blunt went on to try and explain the changes that occurred.
- Member Lancaster §508.27 and Table 17 that states a permanent dock is not allowed but §508.27.B.1.a. states that piers and docks are not subject to the minimum shore setback.
- Chairperson Hyland opened the floor for public comment.
 - Paul Legendre stated that he supports Mr. Wight's right to repair his dock.
 - Lisa St. Hilaire stated that she has fond memories of the dock and she thinks it should be fixed.
 - Richard Legendre stated the dock should be repaired.
 - Another Mr. Legendre supports having the dock fixed
 - Ken Johnson supports the dock being fixed.
 - Lionel Ferland, Jr. supports fixing the dock.
 - Cynthia St. Hilaire also supports fixing the dock.
 - Chairperson Hyland stated the purpose of the Great Ponds Act and Shoreland Zoning Act to protect waterbodies.
 - Mark Pontbriand attested to Mr. Wight's being a steward of the lake.
 - Heidi Jacques supports fixing the dock.

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- Member Bowes stated that he's hung up on the fact that the dock has been there for years and isn't brand new and the damage wasn't caused by them.
- Member Lancaster stated that the impact on the lake already exists because they aren't adding new footings so there's no impact on the lake.
 - Chairperson Hyland stated that the shade from the dock has a great impact on the lake but agreed it has been there for a long time.
- CEO Neal stated that the permit requested was not for repair it was asked for replace.
 - Member Bowes asked if CEO Neal can give a permit to repair a dock in the same exact footprint.
 - CEO Beal stated he can.
 - Member Bowes asked Mr. Wight if he would be satisfied with a permit to repair the dock not replace it.
 - Mr. Wight stated he would be.
- Member Bowes asked Mr. Wight what the width of dock is
 - Mr. Wight stated it is twelve feet.
- Chairperson Hyland stated §508.27.D.6. says "No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity, said structures shall not exceed twenty (20) feet in height".
 - Mr. Bannon Stated that this section doesn't apply.
- Chairperson Hyland closed the hearing and the Board will have discussions.
- Chairperson Hyland stated he is having problems with replacing the whole structure, but he is okay with repairing it.

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- Member Lancaster stated she sees this falling under repair which is allowed if it's 50% or less.
- Member Lancaster asked Mr. Wight and Ms. Blunt if they're planning on repairing the dock with only the changes to the rock.
- Member Bowes asked Chairperson Hyland if the Board can grant the applicants permission to repair the dock only.
 - Chairperson Hyland stated that the only thing the Board can do is rule as to whether the CEO was correct in denying the permit. Or the applicants can put in a new permit application solely to repair the dock.
 - Mr. Bannon asked for clarification from Chairperson Hyland on this. It is his understanding that the Board can give permission to repair the dock.
 - Chairperson Hyland stated that Mr. Wight asked for a replacement of the dock not a repair.
 - Mr. Bannon stated that it is only a repair no matter the language used.
- **Member Hyland made a motion to grant the appeal for Douglas Wight with conditions that the existing dock be repaired to the condition it was before the storm damage. Member Lancaster seconded the motion.**
Discussion: None Vote: 3-yes 0-no **Appeal is Granted**

FINDINGS OF FACT:

1. Name of Applicant: Douglas Wight
2. Mailing Address: P.O. Box 99
3. City or Town: West Poland State: ME Zip: 04291
4. Telephone: (207) 998-8277
5. Name of Property Owner (if different from applicant): Douglas and Candace Wight
6. Location of property for which variance is requested (street/road address):
108 Legendre Lane
7. Zoning district in which property is located: Rural Residential 1 and Limited Residential

POLAND BOARD OF APPEALS
MINUTES OF MEETING
October 3, 2018
Approved on October 16, 2019

8. Tax map and lot number of subject property: Map 23 Lot 6
9. The applicant has demonstrated a legal interest in the subject property by providing a copy of a: Quitclaim deed.
10. The applicant proposes to repair or reconstruct a permanent dock which is seventy feet (70') long and twelve feet (12') wide.
11. The completed application was submitted on August 30, 2018.
12. A public hearing was held on October 3, 2018. The public hearing was delayed till that date at the request of the applicant.
13. The relevant sections of the Poland Comprehensive Land Use Code are: §504.1, §504.2(B), §504.3 (2), §504 (D), §504(D)(1), §508.27(A)(17), and §508.27(B)(1)(A).
14. The other relevant factors are as follows:
 - A. There was testimony from members of the audience and Mr. Wight that the dock had been previously larger than it is now, that concrete pier had been removed by him, that the dock is now smaller than it was originally, and that what he proposing to do is not to expand the footprint or size of the dock from the conditions that currently exist.

CONCLUSIONS OF LAW:

Based on the above stated facts and the provisions of the ordinance cited, the Board concludes that the applicant is proposing to repair a non-conforming structure and use and replace them with a structure that is lower in height the remaining size and dimensions will stay the same.

DECISION:

Based on the above findings of fact and conclusion, the Town of Poland Board of Appeals votes to approve your application for administrative appeal. If you are unhappy with this decision you may request a reconsideration by the Board within thirty (30) days of the date of this decision. You may file an appeal in the Superior Court within forty-five (45) days of the date of this decision.

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.

**POLAND BOARD OF APPEALS
MINUTES OF MEETING
October 3, 2018
Approved on October 16, 2019**

ADJOURN – Member Bowes moved to adjourn the meeting at 9:25 pm. Member Lancaster seconded the motion. Discussion: None Vote: 3-yes 0-no

Recorded by: Sarah Merrill

Board of Appeals

Mark Hyland, Chairperson

Gerard Bowes, Vice - Chairperson

Lou Ann Lancaster, Member

Absent with Notice
Joseph Radziszewski, Jr., Member

Absent with Notice
Stanley Tetenman, Alternate

, Alternate

Board of Appeals

Rosenthal Appeal

October 16, 2019

Appellant and Abutter Notifications with Certified Mail Numbers



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

September 23, 2019

Michael Rosenthal

P.O. Box 15

West Poland, ME 04291

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

Certified Receipt No: 91 7199 9991 7030 8654 2227

Marla Rosenthal

109 Mariners Walk

Milford, CT 06460

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

Certified Receipt No: 91 7199 9991 7030 8654 2210

Dear Mr. Rosenthal,

Re: Administrative Appeal – Map 0032, Lot 0008

This letter is to confirm that on September 17, 2019 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) business days of receipt of your appeal. Your scheduled hearing date is **Wednesday, October 16, 2019 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

September 23, 2019

Michael Rosenthal

P.O. Box 15

West Poland, ME 04291

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

Certified Receipt No: 91 7199 9991 7030 8654 2227

Marla Rosenthal

109 Mariners Walk

Milford, CT 06460

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

Certified Receipt No: 91 7199 9991 7030 8654 2210

Dear Mr. Rosenthal,

Re: Administrative Appeal – Map 0032, Lot 0008

This letter is to confirm that on September 17, 2019 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) business days of receipt of your appeal. Your scheduled hearing date is **Wednesday, October 16, 2019 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2081

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

ANNEAR, DANA E. ROSEN
24 COACHMAN AVE.
AUBURN, ME 04210



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2098

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

AUBE, WILLIAM G.
51 GARLAND SWAMP 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2104

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

BRACCO, CHRISTOPHER
126 LITTLE PLAINS ROAD
HUNTINGTON, NY 11743



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2111

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

BSE SWAMP RENTALS, LLC
1 RANDALL ROAD
PEABODY, MA 01960



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2128

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

CARROLL, KATHERINE D. (TRUSTEE)
P. O. BOX 202
POLAND, ME 04274



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2135

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

EMERSON, KENNETH W.
241 BAKERSTOWN 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2142

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

FINNERTY, MICHAEL P.
178 COOK ST FIRST FLOOR
AUBURN, ME 04210



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2159

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

GRUSKIN, GLENN
35 GARLAND SWAMP 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2166

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

GRUSKIN, KAREN
8 CYPRESS ST.
MARBLEHEAD, MA 01945



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2173

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

HARRIS, ROBERT JR
78 WESTERN AVE.
AUBURN, ME 04210



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2180

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LABBE, LORI A.
244 BAKERSTOWN 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2197

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LAPRE, DEBRA A.
2801 ASHFORD CT.
MIDDLETOWN, NJ 07748



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7030 8654 2203

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LAROSA, DOMINIC & ELIZABETH Trustees
16 MEDITATION LANE
ATKINSON, NH 03811



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4746 7030

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LASKEY, JOHN E.
P. O. BOX 119
WEST POLAND, ME 04291



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4746 7047

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

LUMBARD, MARK B. (TRUSTEE)
C/O MICHAEL MESSINA
111 W 75TH STREET
KANSAS CITY, MO 64114



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6583

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

PURDY, JAMES G. JR.
224 BAKERSTOWN 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, AND ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6590

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

RAYNES, JAMES D.
51 BROADWAY
LYNN, MA 01904



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6606

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

SHAPIRO, BARBARA F. - TRUST
MICHAEL SHAPIRO
410 MAIN STREET
LEWISTON, ME 04240



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6613

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
BE CONDUCTED ON **WEDNESDAY, OCTOBER 16, 2019 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

THE INN AT WOLF COVE, LLC
5 JORDAN SHORE DR
POLAND, ME 04274



Board of Appeals

1231 Maine Street,
Poland, Maine 04274

BOARD OF APPEALS

TO: APPEALS BOARD MEMBERS, CODE ENFORCEMENT OFFICER, PLANNING BOARD, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6620

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

TURGEON, JONATHAN
20 GARLAND SWAMP 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, AND
ABUTTERS TO MAP 32, LOT 8

FROM: MARK HYLAND, APPEALS BOARD CHAIRMAN

RE: ADMINISTRATIVE APPEAL – MAP 0032, LOT 0008

DATE: SEPTEMBER 23, 2019

Certified Receipt No: 91 7199 9991 7033 4708 6637

THE APPEALS BOARD WILL HOLD A PUBLIC HEARING FOR:

AN ADMINISTRATIVE APPEAL BY MICHAEL ROSENTHAL, FOR MAP 32, LOT 8. THE HEARING WILL
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CONFERENCE ROOM. ALL ABUTTERS WHO RECEIVE THIS NOTICE ARE INVITED TO ATTEND.

RESPECTFULLY YOURS,

MARK HYLAND, CHAIRMAN
POLAND BOARD OF APPEALS

WINSLOW, MICHAEL T.
475 WHITE OAK HILL RD.
POLAND, ME 04274

Board of Appeals

Rosenthal Appeal

October 16, 2019

Appellant's Packet

September 10, 2019

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

Ladies and Gentlemen of the Board of Appeals,

This is an appeal from a determination letter dated July 31, 2019 from Code Enforcement Officer Neal ("CEO") under which the CEO denied our application for dock under that certain Shoreland Project Permit Application dated July 26, 2019 (the "Application").

Enclosed are the following:

1. The Application
2. Transmittal letter to CEO dated July 26, 2019
3. Check #169 in the amount of \$75 made payable to Town of Poland, Maine (returned by CEO)
4. Letter dated July 31, 2019 from CEO denying the Application
5. Application for Administrative Appeal (with attachments) ("Appeal Application")
6. Check #170 in the amount of \$150 made payable to the Town of Poland, Maine as the fee for this appeal
7. Certified copy of Deed for property situated at

45- Garland Swamp Road (evidencing the existence of the right-of-way as of 1952)

8. Letter from Marla Rorntal to CEO authorizing Michael Rorntal as her duly appointed agent on this matter.

9. E-mail of July 29, 2019 from CEO to Michael Rorntal setting forth the provisions of §459 of the Code regarding "Easements and rights-of-way; installation of poles."

10. E-mail chain of July 29, 2019 with CEO

For the reasons set forth in the Appeal Application, the Appellant respectfully requests that the Board of Appeals vacates the determination of the CEO and grants Appellant's Application.

Please provide notice of the date of the hearing to:

Michael Rorntal

P.O. Box 15

West Poland, Maine 04291

Marla Rorntal

109 Mariners Walk

Milford, CT 06460

Sincerely,

Michael Rorntal

CC: Marla Rorntal
ENCLOSURES

July 26, 2019

Scott Neal
Code Enforcement Officer
Town of Poland
1231 Main Street
Poland, ME 04274

Dear Mr. Neal,

As you know, I installed an 8-foot aluminum dock at the end of our right-of-way into Tripp Lake on July 24, 2019. I was not aware, at the time, that it was necessary to secure a Shoreland Project Permit in order to do so. It was my error and I apologize. I can assure you that it was inadvertent.

I am enclosing a Permit Application for that project. Please advise what further steps are necessary to make the project compliant.

Again, I regret that I was unaware of the requirement to obtain the permit. My family has had a dock at the lake for many years, but that was many years ago when I believe there was no permit required.

Sincerely,

Michael Rosten

Michael Rosten

Enclosure

TOWN OF POLAND

1231 Maine Street
Poland, ME 04274



Shoreland 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:	45 GARLAND SWAMP ROAD
Parcel ID#:	8
Estimated Cost:	\$250.00/100
Current Use:	Lake
Proposed Use:	Dock in lake
Please Describe Your Project:	8 foot aluminum dock with 4 posts

☐ Soil Disturbance

☒ Dock

☐ Tree Cutting

☐ Other

Property Owner Information

Owner Name:	MARLA ROSENTHAL
Mailing Address:	109 MARINERS WALK, MILFORD CT 06460
Phone Number:	203-450-8961
Email Address:	THE MILBOX.MK@YAHOO.COM

Contractor or Applicant Information

Contractor Name:	MICHAEL ROSENTHAL
Mailing Address:	P.O. BOX 15 West Poland, Maine 04291
Phone Number:	203-450-8961
Email Address:	M.R. The milbox@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:	7/26/2019
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Code Enforcement Office

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

Michael Rosenthal
P.O. Box 15
West Poland, Maine 04291

July 31, 2019

Parcel ID: 0032-0008

Located At: 45 Garland Swamp Rd.

Zoning District: Rural Residential-2, Limited Residential, and Aquifer Protection Overlay 1

Dear Mr. Rosenthal,

You applied for a Shoreland Project Permit (# 2019-147) for a dock on parcel number 0032-0009 on which you claim to have a right of way. Accompanied with your application was the following:

- A cover letter from Michael Rosenthal.
- A check (#169) to the Town of Poland in the amount of \$75.00.

You have not provided a deed to the property showing right, title, or interest, including the right to install a dock in the right-of-way, and you have not shown you are the owners authorized agent. The parcel on which you would like to install a dock (0032-009) is a legal nonconforming lot with sixty nine (69') feet of lake frontage and one dock is already installed on that parcel. There is an existing beach on this parcel where you have already installed a dock without a permit. A second dock is not allowed on the parcel.

The following are the sections of the Town of Poland Comprehensive Land Use Code (CLUC) on which this decision is based:

Chapter 3 §303.2. C - No Building Permit for a building, structure or use on any lot shall be issued except to the owner of record thereof, or the owner's authorized agent, until the proposed construction or alteration of a building or structure shall comply in all respects to this Code or with a decision rendered by the Board of Appeals or Planning Board.

Chapter 5 §508.27. D. 1 - No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 507.2 a second structure may be allowed and may remain as long as the lot is not further divided.

Chapter 5 §508.27. D. 3 - The location shall not interfere with existing developed or natural beach areas.

Chapter 5 §507.2. D. 3 - The minimum Shore Frontage shall be (200) feet.



Code Enforcement Office

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

In conclusion and pursuant to Chapter 3 §303.2. C, Chapter 5 §508.27. D. 1, Chapter 5 §508.27. D. 3, and Chapter 5 §507.2. D. 3 of the CLUC, I regret to inform you that this office has denied your permit application. If you can provide a deed to the property showing right, title, or interest or that you are the owner's authorized agent then you have the right to appeal this decision to the Board of Appeals within forty five (45) business days of the date of this letter pursuant to Ch. 3, §304.3 of the CLUC.

Sincerely,

Scott Neal
Code Enforcement Officer

CC: Matthew Garside, Town Manager

CC: Marla Dodie Rosenthal

ENC: Administrative Appeal Application

ENC: Check #169

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

Application for Administrative Appeal

Appellant(s): <u>MARLA ROSENTHAL</u>		
Mail Address: <u>109 MARINERS WALK</u>	Work Phone: <u>203-450-8961</u>	
Town/State/Zip: <u>MILFORD, CT 06460</u>	Home Phone: <u>203-450-8961</u>	
Road Location: <u>45 GARLAND SWAMP ROAD</u>		
Map # _____	Lot # _____	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: Chap. 383B.2.C; Chap. 508.27.D.1 + D.3; Chap. 508.27.D.3; Chap. 507.2.D.3
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.


Appellant's Signature

Co-Appellant's Signature

9/10/2019
Date

Attachment 1 to Application for
Administrative Appeal
45 Garland Swamp Road

Chapter 3 303.2.C :

One ground for denial of the Application cited by
CEO is failure to obtain written authorization
by the owner of the property to act as the owner's
agent with respect to the Application.

Enclosed please find a letter of authorization from
the owner, Nada Rowntal, authorizing Michal
Rowntal to act as her agent in connection with
both the filing of the Application and the Appeal
Application and all related administrative matters.

Chapter 5 §508.27.D.1 and Chapter 5 §507.2.D.3

CEO's position is that since there is already one dock
on the waterfront servant pad, there can not be
another dock. CEO's position as set forth in his
e-mail of July 29, 2019 at 2:18 pm is that he can
not grant an Application for a Dock "unless the deed is
written to say you may install a dock on the landowner

2.

Gives permission for it"

CEO's position regarding the requirement that any right-of-way is not qualifying for a dock unless the right-of-way has 200 feet of frontage (whenever there is already one dock on the servient estate) is wrong as a matter of law. First of all, it is common knowledge that most, and the vast majority, of waterfront properties have docks. It is also obvious that it is extremely unlikely that a right-of-way would have 200 feet of frontage. Therefore, under the CEO's position, it would be virtually impossible for the owner of a right-of-way to have a dock. This is clearly not the law.

Code §459 makes it clear that people that have a deeded right-of-way that was in effect on or before December 31, 2017 can have a dock with respect to their right-of-way. Appellant's deed, as of 1952, provides for the right-of-way. Under CEO's interpretation of Code Chapter 5 §508.27.D.1 and §507.2.D.3, the grandfather rules in these provisions would be meaningless since no right-of-way would ever qualify to have a dock if the servient estate already has a dock, which is nearly always the case.

CEO's position is contrary to custom and practice.

3.

My family has owned 45 Carbond Swamp Road since 1952 and have maintained a dock with respect to our right-of-way for more than 40 years. CEO's position is contrary to how these Code provisions have been interpreted over the years.

As discussed above, CEO's position not only is contrary to the Code provision and its interpretation and practice but it is illogical. Why would the Code grandfather rights-of-way established prior to January 1, 2018 if the grandfathered rights are meaningless since the right-of-way did not possess 200 feet of lake frontage?

CEO's position is arbitrary and is not based upon any citation of authority. It is likely unprecedented and certainly is not supported by administrative pronouncements or legal decisions.

CEO's email of July 29, 2019 at 2:18pm clearly misstates the law. CEO fails to acknowledge that Applicant's right-of-way was created before January 1, 2018 and therefore has grandfather protection under Code §459. CEO erroneously contends that he can't grant the Application without the dock pending for the installation of

4.

a clock or without the consent of the servant estate landowner. It is unfortunate that CEO misstate the law and refuses to grant the Appellants based upon his misinterpretation of the law. CEO was fully aware that the Appellants' Dad was granted many years prior to 2018 as I have discussed this point both in person and on the phone with CEO. Yet, he takes this position which is clearly erroneous.

08456

BOOK 2090 PAGE 187

BK7660PG0319

MICHAEL ROSENTHAL
of Honolulu, Hawaii
(being unmarried), for consideration paid, release

012113

to MARLA DODIE ROSENTHAL

of Honolulu, Hawaii
the land in Poland, Androscoggin County, State of Maine, described
as follows:

A certain lot or parcel of land situated at Tripp Lake, in the Town
of Poland, County of Androscoggin and State of Maine, bounded and
described as follows, to wit:

Commencing at a point in the northwesterly line of the County Road
leading from the Garland Five Corners to West Poland, at the
easterly corner of a lot of land conveyed by Kitty P. Libby to Fred
H. Waterhouse by Warranty Deed dated August 9, 1910, and recorded in
Androscoggin County Registry of Deeds in Book 235, Page 561; thence
in a northeasterly direction by the northwesterly line of said
County Road, Seventy-Eight and Thirty-Five Hundredths (78.35) Feet
to the southerly corner of a lot of land conveyed by Regina Trober
to Benjamin Cohen by Executor's Deed, dated May 11, 1950, and
recorded in said Registry in Book 640, Page 145; thence in a
northwesterly direction by land of said Cohen about Ninety-One (91)
Feet to the easterly corner of land conveyed by Regina Trober to one
Walter King by deed dated May 28, 1952, and recorded in said
Registry in Book 670, Page 545; thence in a southwesterly direction
by land of said King, Seventy-Four and Sixty-Five Hundredths (74.65)
Feet to the northeasterly line of land conveyed by the said Kitty
Libby to Waterhouse; thence in a southeasterly direction, by said
northeasterly line, to the point of beginning.

Excepting and reserving to the "Grantor," its successors and
assigns, a right-of-way Ten (10) Feet in width southwesterly of
and adjacent to the land of said Cohen. Said right-of-way to be
bounded southeasterly by the northwesterly line of said County
Road and northwesterly by the southeasterly line of land conveyed
by said Trober to said King.

Also conveying to this Grantee, her heirs and assigns forever, a
right-of-way Eight (8) Feet in width southwesterly of and
adjacent to land conveyed to the said Cohen bounded southeasterly
by the northwesterly line of the above described premises and
northwesterly by low water mark of Tripp Pond.

Being the same premises conveyed to the late Marty V. Rosenthal by
the Warranty Deed of Regina Trober, dated June 19, 1952, and
recorded in said Registry in Book 669, Page 565.

GAIL ROSENTHAL

wife of said grantor,

joins as grantor and releases all rights by descent and all other rights.

Witness MY hand and seal this

day of

1987

Michael Rosenthal

Gail Rosenthal

The State of Hawaii

ss.

1987

Then personally appeared the above named Michael Rosenthal

and acknowledged the foregoing instrument to be his free act and deed,

Before me,

Amy R. Araski

Notary Public

1205 S. QUITCLAIM DEED WITHOUT COVENANT OR RELEASE DEED

NO MAINER EY
TRANSFER TAX PAIDANDROSCOGGIN
RECEIVED MAY 15 1987
AT 9 H. - M. H. M.JAMES G. WELCH
CORNELL AND COMPANY
24 JULY 9 - 1987RECORDED
REGISTERED

SEAL

SEAL

STATE OF MAINE
ANDROSCOGGIN
DATE JULY 10, 2018 #OF PAGES
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF RECORD
BOOK 2090 PAGE 187ATTEST:
REGISTER OF DEEDS, ANDROSCOGGIN COUNTY

Scott Neal
Code Enforcement Officer
Town of Poland
C/O Michael Rosenthal
PO Box 15
West Poland, Maine

Dear Officer Neal,

As you know, I am the owner of the property situated at 45 Garland Swamp Road in Poland. I hereby authorize and appoint my father, Michael Rosenthal, as my attorney in fact and agent with respect to the filing of an Application for Dock Permit at said property as well as with respect to any and all administrative proceedings with respect to both the Application and your denial of the Application pursuant to your letter of July 31, 2019. I hereby grant to my father all of the rights and powers that I have with respect to this matter and he shall have all of the necessary authority to pursue this matter on my behalf. Please deal with him directly or with anyone that he designates to act on his behalf.

Should you need anything further from me in this regard, please notify my father and I will provide you with what you need.

Sincerely,



Marla Rosenthal

CC: Michael Rosenthal

On Mon, Jul 29, 2019 at 11:26 AM, Scott Neal

<sneal@polandtownoffice.org> wrote:

§459. Easements and rights-of-way; installation of docks

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Dock" means a platform used for access to a water body or to secure, protect and provide access to a boat or ship. The platform may extend from a shore over the water body or may be a floating platform attached to a mooring. [2017, c. 194, §1 (NEW).]

B. "Easement or right-of-way" means the right of a person to pass over the land of another person. [2017, c. 194, §1 (NEW).]

C. "Water body" means all inland and coastal waters, including but not limited to all ponds, great ponds, lakes, rivers, streams and coastal waters. [2017, c. 194, §1 (NEW).]

[2017, c. 194, §1 (NEW) .]

2. Easements or rights-of-way established on or after January 1, 2018. The owner of an easement or right-of-way leading to or touching upon a water body does not have the right by implication to construct a dock on the easement or right-of-way or use the easement or right-of-way to facilitate the construction of a dock on the water body if:

A. The easement or right-of-way is originally established in a written instrument executed on or after January 1, 2018; and [2017, c. 194, §1 (NEW).]

B. The instrument granting or reserving the easement or right-of-way does not expressly include the right to construct a dock on the easement or right-of-way or the right to use the easement or right-of-way to facilitate the construction of a dock on the water body. [2017, c. 194, §1 (NEW).]

Scott Neal
Code Enforcement Officer
Town of Poland
sneal@polandtownoffice.org
(207) 998-4604

Sent from Yahoo Mail on Android

On Mon, Jul 29, 2019 at 2:47 PM, Michael Rosenthal
<themailbox.mr@yahoo.com> wrote:

Dear Mr. Neal,

With all due respect, your interpretation as set forth in your letter and emails is contrary to the plain meaning of the Code. Code section 459, paragraph 2 specifically provides that this new limitation on docks and right of ways only applies to a right of way created on or after 1/1/18. I respectfully request that you consult with Town counsel on this matter. I believe he will confirm my view

I don't understand how you are interpreting the provision by avoiding the plain wording. I am not trying to be rude or disrespectful. I hope that you understand that. Could you please explain to me what you think the initial sentence of Code section 459 paragraph 2 means when it refers to the new provision only applying to a right of way created on or after 1/1/18? Your interpretation of the Code would make that part of the Code meaningless.

Is it your position that the Code provision that you sent me, section 459 section 2, applies no matter the fact that the right of way was created prior to 1/1/18?

As far as the definition of a dock is concerned, I agree that our dock is a dock.

I would hope that you would reconsider after consulting with counsel. This would avoid additional time and effort in resolving this issue.

It was my expectation that this could be resolved simply by filing the dock application for permit and paying the late fee of triple the normal application fee. Otherwise, we will go through the appropriate procedures to get the matter resolved. I don't see that to be in anybody's best interest.

I would be pleased to meet with, or talk by phone, with the Town's counsel to explain my position and our interpretation of the applicable Code provision. Please let me know if this is possible.

Thank you for your time and attention to this matter and for the courtesy of the prompt responses.

Sincerely,

Mickey

Sent from Yahoo Mail on Android

On Mon, Jul 29, 2019 at 2:18 PM, Scott Neal
<sneal@polandtownoffice.org> wrote:

Mickey,

I understand that the right of way was created before 2018. I sent you that for the definition of a dock because you stated your dock was not on the land. I can't approve a dock on a right of way unless the deed is written to say you may install a dock or the landowner gives permission for it and has the appropriate frontage for multiple docks.

Scott Neal

Code Enforcement Officer

Town of Poland

sneal@polandtownoffice.org

(207) 998-4604

From: Michael Rosenthal <themailbox.mr@yahoo.com>

Sent: Monday, July 29, 2019 11:58 AM

To: Scott Neal <sneal@polandtownoffice.org>

Subject: RE: Fw: Re: 45 Garland Swamp Road

Board of Appeals

Rosenthal Appeal

October 16, 2019

CEO Packet to Board



Code Enforcement Office

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

September 24, 2019

Town of Poland Board of Appeals
1231 Maine St.
Poland, Maine 04274

RE: Marla Rosenthal Administrative Appeal
45 Garland Swamp Rd.
Poland, Maine 04274

Map: 0032 Lot: 0008

To the Board of Appeals,

On July 24, 2019 I received an email complaint that Mr. Rosenthal installed a dock on the property of Stacy Sarno at 49 Garland Swamp Rd. Map: 0032 Lot: 0009. Mr. Rosenthal has a right of way to Tripp Lake across Ms. Sarno's property. On July 25, 2019 a Stop Work Order and a Violation Notice was issued to Ms. Rosenthal after visiting the property. On July 29, 2019 this office received a Shoreland Project Permit Application for a dock at 45 Garland Swamp Rd. from Mr. Rosenthal. On July 30, 2019 after a phone conversation with the Town Attorney a decision was made by this office to deny the requested dock permit. On July 31, 2019 a denial letter was drafted by this office and reviewed by the Town Attorney. The denial letter was then sent to Mr. Rosenthal as well as the property owner Ms. Rosenthal.

Mr. Rosenthal's seems to base his case on the fact that this office misinterpreted section 459. "Easements and rights-of-way; installation of docks" from the Maine State Statutes. Section 459 was sent to Mr. Rosenthal for the definition of a dock after he claimed the dock was not on private property it was in the lake. As you can see from the Stop Work Order/Notice of Violation and the denial letter section 459 was not used to determine the violation or the denial.

Sincerely,

Scott Neal
Code Enforcement Officer

Scott Neal

From: ss@officesofattorneysarno.com
Sent: Wednesday, July 24, 2019 6:59 PM
To: Sarah Merrill
Cc: Scott Neal
Subject: RE: 45 garland

Scott, Micky has not put a dock in the water restricting our access to the water and our beach area. This is illegal he does not have the right to do this. I need you to please take care of this man...this is unbelievable! It is against the law for his to do this and against code to install a dock in a beach area.

§459. Easements and rights-of-way; installation of docks

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Dock" means a platform used for access to a water body or to secure, protect and provide access to a boat or ship. The platform may extend from a shore over the water body or may be a floating platform attached to a mooring. [2017, c. 194, §1 (NEW).]

B. "Easement or right-of-way" means the right of a person to pass over the land of another person. [2017, c. 194, §1 (NEW).]

C. "Water body" means all inland and coastal waters, including but not limited to all ponds, great ponds, lakes, rivers, streams and coastal waters. [2017, c. 194, §1 (NEW).]
[2017, c. 194, §1 (NEW) .]

2. Easements or rights-of-way established on or after January 1, 2018. The owner of an easement or right-of-way leading to or touching upon a water body does not have the right by implication to construct a dock on the easement or right-of-way or use the easement or right-of-way to facilitate the construction of a dock on the water body if:

A. The easement or right-of-way is originally established in a written instrument executed on or after January 1, 2018; and [2017, c. 194, §1 (NEW).]

B. The instrument granting or reserving the easement or right-of-way does not expressly include the right to construct a dock on the easement or right-of-way or the right to use the easement or right-of-way to facilitate the construction of a dock on the water body. [2017, c. 194, §1 (NEW).]

Sincerely,

Stacy Sarno, Esq.

Law Office of Stacy Sarno, LLC.
11 Salem Street, Third Fl., Suite 11
Medford, MA 02155

Tel: 781-287-0078
Fax: 866-817-0350

Email: ss@officesofattorneysarno.com
Website: www.officesofattorneysarno.com

TOWN OF POLAND

CODE ENFORCEMENT OFFICE

BUILDING INSPECTION / CODE ENFORCEMENT

**THIS IS AN ORDER TO
STOP ALL WORK**

ADDRESS 45 Garland Swamp Rd.

TAX MAP # 0032-0008

**ALL WORK ON THIS PROPERTY
MUST STOP IMMEDIATELY**

COMMENTS Please contact the Code Enforcement Office at 998-4604

ALL PERSONS ACTING CONTRARY TO THIS ORDER OR
REMOVING OR MUTILATING THIS NOTICE ARE LIABLE TO
ARREST UNLESS SUCH ACTION IS AUTHORIZED BY THE
DEPARTMENT

DATE 07/25/2019

INSPECTOR


SCOTT NEAL
CODE ENFORCEMENT OFFICER





Code Enforcement Office

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

Violation Notice/Stop Work Order

July 25, 2019

Marla Dodie Rosenthal
109 Mariners Walk
Milford, CT 06460

Parcel ID: 0032-0008

Located at: 45 Garland Swamp Rd.

Zoning District: Rural Residential 2 (RR1), Limited Residential (LR)

Certified Mail # 91 7199 9991 7038 1933 2729

Ms. Rosenthal,

On July 24, 2019 an inspection of your property showed there is structural work being done on the existing structure. There are no permits or applications on file for this activity. There is a campground set up on the property and there are no records of a permit for an Individual Private Campsite. It has come to my attention that you have installed a dock on a right of way that is not your property. There are no applications on file for the dock and it would not be approved by this office.

This property is now in violation of Chapter 3 § 303.1, Chapter 5 § 508.27.D, Chapter 5 § 508.27.E of the Town of Poland Comprehensive Land Use Code (CLUC) and Chapter 1 § R105 of the 2015 International Residential Code (IRC)

303.1 Permits Required - After the effective date of this Code, no person shall engage in any activity or use of land requiring a permit in the district in which such activity or use would occur without first obtaining a permit. Notwithstanding the issuance of a permit or permits, no person shall engage in any activity or use of land in violation of this Code or any other Ordinance of the Town of Poland.

508.27.D. Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or below the Normal High-water Line of a Water Body or Within a Wetland.

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 507.2 a second structure may be allowed and may remain as long as the lot is not further divided.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
3. The location shall not interfere with existing developed or natural beach areas.



Code Enforcement Office

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

4. The facility shall be located so as to minimize adverse effects on fish, wildlife and waterfowl habitats.
5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. The maximum width for residential facilities shall be no greater than six (6) feet in width and no greater than twelve (12) feet in width for commercial.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity, said structures shall not exceed twenty (20) feet in height.
7. No existing structure built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to a residential dwelling unit in any district.
8. Permanent structures projecting into or over water bodies shall require a permit from the Maine Department of Environmental Protection pursuant to the Natural Resource Protection Act. Permanent structures projecting into or over water bodies shall not be allowed, with the exception of structures relating to existing dams and bridges.
 - a) Vegetation may be removed in excess of the standards in Section 508.27.M of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - a. When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment access way must be restored.
 - b. Revegetation must occur in accordance with Section 508.27.P.

508.27.E. Individual Private Campsites - Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. One (1) campsite per lot existing on the effective date of this Code or thirty thousand (30,000) sq. ft. of lot area within the Shoreland Area, whichever is less, may be permitted.
2. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
3. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back a minimum of one hundred (100) feet horizontal distance, from the normal high-water line of a Great Pond, and seventy-five (75) feet horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. Camping units plus canopies must meet side, road and shoreline setback requirements.
4. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except a canopy shall be attached to the recreational vehicle.



Code Enforcement Office

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

5. The clearing of vegetation for the sitting of the recreational vehicle, tent or similar shelter in the Shoreland Area shall be limited to one thousand (1,000) sq. ft. Section 508.27.M may also apply.
6. A written Sewage Disposal Plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
7. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred twenty (120) days per year, all requirements for residential structures shall be met including the installation of a Subsurface Wastewater Disposal System in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

The structure on this property has been posted against occupancy since April 23, 2012. You have seven (7) days from the date of this notice to remove the dock, vacate the campsite, and cease to occupy the structure.

R105.1 Required. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.

Notice of Violation

This is a notice of violation pursuant to Ch. 4 § 404.2 of the CLUC. All referenced violations shall be corrected within seven (7) days of the date of this notice. A reinspection of the premises will occur on August 1, 2019, at which time compliance will be required. Failure to comply may result in this office referring the matter to the Town's attorney for legal action and possible civil penalties, as provided for in Ch. 4 § 404.3 of the CLUC and 30-A M.R.S.A. § 4452.

Civil Penalties May Be Applied

If you do not comply with this notice in the time allotted, you will be levied a civil penalty of \$100.00 as allowed in the Town of Poland's Comprehensive Land Use Code § 404.4 for a First Citation issued to you. This penalty must be paid to the Town of Poland. If not paid by the due date, the Town may impose interest on the unpaid balance at the rate of 18% per annum. Failure to comply with this citation may result in a Second Citation for an additional \$200.00 on top of the first citation; and an additional \$400.00 penalty for a Third Citation; and an additional \$800.00 penalty for a Fourth Citation. Please note that these amounts are cumulative.

Failure to pay a penalty is also a violation of Title 30-A M.S.R.A. §4452 and is subject to further penalties allowed under this section. Other penalties of between \$100.00 and \$2500.00 per day for each day that the violation continues can be sought through the civil proceedings in the District Court as allowed by the Comprehensive Land Use Code.



Code Enforcement Office

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

Appeals Action

If you disagree with my interpretation of the Town of Poland's Comprehensive Land Use Code and or the State's statutes, or if you wish to challenge this Notice of Violation, you may make an *Administrative Appeal* to the Town of Poland's Board of Appeals. The appropriately completed application along with the filing fees for the appeal must be filed in this office within forty-five (45) days of receipt of this notice. Poland's Comprehensive Land Use Code can be found on the Town's website <http://www.polandtownoffice.org>. The code along with the Zoning Map and Use Tables may be found on the *Code Enforcement Office* page under Services. The Maine State Statutes may be found at <http://legislature.maine.gov/statutes/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Neal", is written over a horizontal line.

Scott Neal
Code Enforcement Officer

CC: Matt Garside Poland Town Manager

Enc: Application for Administrative Appeal.

TOWN OF POLAND

1231 Maine Street
Poland, ME 04274



Shoreland Project Permit Application

FOR OFFICIAL USE ONLY

Date Received	7-29-19
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: 45 GARLAND SWAMP ROAD

Parcel ID#:

Estimated Cost:

Current Use:

Proposed Use:

Please Describe Your
Project:

☐ Soil Disturbance

☒ Dock

☐ Tree Cutting

☐ Other

Property Owner Information

Owner Name:

Mailing Address:

Phone Number:

Email Address:

Contractor or Applicant Information

Contractor Name:

Mailing Address:

Phone Number:

Email Address:

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:

7/26/2019

July 26, 2019

Scott Neal
Code Enforcement Officer
Town of Poland
1231 Main Street
Poland, ME 04274

Dear Mr. Neal,

As you know, I installed an 8-foot aluminum dock at the end of our right-of-way into Tripp Lake on July 24, 2019. I was not aware, at the time, that it was necessary to secure a Shoreland Project Permit in order to do so. It was my error and I apologize. I can assure you that it was inadvertent.

I am enclosing a Permit Application for that project. Please advise what further steps are necessary to make the project compliant. I am enclosing the \$75.00 fee for the Permit Application as well.

Again, I regret that I was unaware of the requirement to obtain the permit. My family has had a dock at the lake for many years, but that was many years ago when I believe there was no permit required.

Sincerely,

Michael Rosten

Michael Rosten

Enclosure

Scott Neal

From: Scott Neal
Sent: Monday, July 29, 2019 2:18 PM
To: themailbox.mr@yahoo.com
Subject: RE: Fw: Re: 45 Garland Swamp Road

Mickey,

I understand that the right of way was created before 2018. I sent you that for the definition of a dock because you stated your dock was not on the land. I can't approve a dock on a right of way unless the deed is written to say you may install a dock or the landowner gives permission for it and has the appropriate frontage for multiple docks.

Scott Neal
Code Enforcement Officer
Town of Poland
sneal@polandtownoffice.org
(207) 998-4604

From: Michael Rosenthal <themailbox.mr@yahoo.com>
Sent: Monday, July 29, 2019 11:58 AM
To: Scott Neal <sneal@polandtownoffice.org>
Subject: RE: Fw: Re: 45 Garland Swamp Road

Dear Officer Neal,

Thank you Scott for providing the Code provision dealing with docks. With all due respect, the Code provision that you referenced provides that it applies to " Easements or Right of Ways established on or after 1/1/2018". Our deed established the easement in 1952. I will be happy to provide you with a copy of the deed if you don't have easy access. This provision which was enacted in 2017 should not apply to our grandfathered easement or right of way. The Code is clear on that point.

I hope you will reconsider your position and grant our dock application for permit which was filed last Friday.

Thank you very much for your prompt reply to my question and for your reconsideration of the matter based upon the information that I have provided.

Sincerely,

Mickey

[Sent from Yahoo Mail on Android](#)

On Mon, Jul 29, 2019 at 11:26 AM, Scott Neal
<sneal@polandtownoffice.org> wrote:

§459. Easements and rights-of-way; installation of docks

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Dock" means a platform used for access to a water body or to secure, protect and provide access to a boat or ship. The platform may extend from a shore over the water body or may be a floating platform attached to a mooring. [2017, c. 194, §1 (NEW).]

B. "Easement or right-of-way" means the right of a person to pass over the land of another person. [2017, c. 194, §1 (NEW).]

C. "Water body" means all inland and coastal waters, including but not limited to all ponds, great ponds, lakes, rivers, streams and coastal waters. [2017, c. 194, §1 (NEW).]

[2017, c. 194, §1 (NEW) .]

2. Easements or rights-of-way established on or after January 1, 2018. The owner of an easement or right-of-way leading to or touching upon a water body does not have the right by implication to construct a dock on the easement or right-of-way or use the easement or right-of-way to facilitate the construction of a dock on the water body if:

A. The easement or right-of-way is originally established in a written instrument executed on or after January 1, 2018; and [2017, c. 194, §1 (NEW).]

B. The instrument granting or reserving the easement or right-of-way does not expressly include the right to construct a dock on the easement or right-of-way or the right to use the easement or right-of-way to facilitate the construction of a dock on the water body. [2017, c. 194, §1 (NEW).]

Scott Neal

Code Enforcement Officer

Town of Poland

sneal@polandtownoffice.org

(207) 998-4604

From: Michael Rosenthal <themailbox.mr@yahoo.com>

Sent: Monday, July 29, 2019 10:02 AM

To: Scott Neal <sneal@polandtownoffice.org>; Michael Rosenthal <themailbox.mr@yahoo.com>

Subject: RE: Fw: Re: 45 Garland Swamp Road

Dear Mr. Neal,

I have received your notice. I will be appealing your determinations. I have filed an Application for the dock. The dock is not on private property but is in the lake like the docks of other people.



Code Enforcement Office

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

Michael Rosenthal
P.O. Box 15
West Poland, Maine 04291

July 31, 2019

Parcel ID: 0032-0008

Located At: 45 Garland Swamp Rd.

Zoning District: Rural Residential-2, Limited Residential, and Aquifer Protection Overlay 1

Dear Mr. Rosenthal,

You applied for a Shoreland Project Permit (# 2019-147) for a dock on parcel number 0032-0009 on which you claim to have a right of way. Accompanied with your application was the following:

- A cover letter from Michael Rosenthal.
- A check (#169) to the Town of Poland in the amount of \$75.00.

You have not provided a deed to the property showing right, title, or interest, including the right to install a dock in the right-of-way, and you have not shown you are the owners authorized agent. The parcel on which you would like to install a dock (0032-009) is a legal nonconforming lot with sixty nine (69') feet of lake frontage and one dock is already installed on that parcel. There is an existing beach on this parcel where you have already installed a dock without a permit. A second dock is not allowed on the parcel.

The following are the sections of the Town of Poland Comprehensive Land Use Code (CLUC) on which this decision is based:

Chapter 3 §303.2. C - No Building Permit for a building, structure or use on any lot shall be issued except to the owner of record thereof, or the owner's authorized agent, until the proposed construction or alteration of a building or structure shall comply in all respects to this Code or with a decision rendered by the Board of Appeals or Planning Board.

Chapter 5 §508.27. D. 1 - No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 507.2 a second structure may be allowed and may remain as long as the lot is not further divided.

Chapter 5 §508.27. D. 3 - The location shall not interfere with existing developed or natural beach areas.

Chapter 5 §507.2. D. 3 - The minimum Shore Frontage shall be (200) feet.



Code Enforcement Office

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

In conclusion and pursuant to Chapter 3 §303.2. C, Chapter 5 §508.27. D. 1, Chapter 5 §508.27. D. 3, and Chapter 5 §507.2. D. 3 of the CLUC, I regret to inform you that this office has denied your permit application. If you can provide a deed to the property showing right, title, or interest or that you are the owner's authorized agent then you have the right to appeal this decision to the Board of Appeals within forty five (45) business days of the date of this letter pursuant to Ch. 3, §304.3 of the CLUC.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Neal', is written over a horizontal line.

Scott Neal
Code Enforcement Officer

CC: Matthew Garside, Town Manager

ENC: Administrative Appeal Application

ENC: Check #169

Code Enforcement Office

Town of Poland
1231 Maine Street, 04274
Tel: (207) 998-4604
Fax: (207) 998-2002

Office Use Only

Date Posted: _____
Trio Receipt: _____
Cash _____ Check _____
Teller _____

Residential Building Permit

Denied 7/31/19 (SAN)

Parcel ID	0032-0008	Permit #	BP 2019-147
Road Location	45 GARLAND SWAMP RD.	Permit Type	Shoreland Project
Land Owner	ROSENTHAL, MARLA DODIE & MICHAEL R Phone: 203-450-8961		
Mailing Address	% MICHAEL ROSENTHAL, MILFORD, CT 06		
Application/Contractor Name:	Michael Rosenthal		
Contractor Address:	P.O. Box 15 West Poland	Phone	2034508961
Proposed Project Description: 8' aluminum dock on four posts			

Certificate of Occupancy is required before use of any structure may begin.

Appl. Date	07/29/2019	Cost of Work	Permit Rates	Required Setbacks
Est. Cost	\$250.00	Up to \$1,00	\$20.00	N/A
Lot Size	0.16	Add'l \$1,000	\$5.00 / 100	
Use Group		Detached Structure		Permit Fee
Type Const.		Under 200 Ft:	\$20.00 / Structur	Under 200 Ft:
Zone	RR-2, LR			Planning Board
Shoreland	Yes			
Flood Zone	No			

1. This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules.
2. Building permits do not include plumbing, septic or electrical work.
3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work.

CERTIFICATION

I understand that this permit is valid only for the use specified above. Any changes must be approved by the permitting Bitmap authority. I hereby acknowledge that I have read this application and STATE that the above information is correct, and AGREE to comply with ALL Municipal Ordinances and State Laws regulating activities covered by this permit.

SIGNATURE OF APPLICANT

DATE

This permit is approved on the basis of information provided by the applicant regarding his ownership and boundary locations. The applicant has the burden of ensuring that he has legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title.

Permit Issued By:

Code Enforcement Officer

ALL STRUCTURES MUST MEET THE REQUIREMENTS OF THE MAINE UNIFORM BUILDING AND ENERGY CODE. Construction must be substantially started within six months of permit being issued or permit becomes void.