Town of Lamoine, Maine
Established 1870

Lamoine Board of Appeals

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Notice of Decision
Benincasa v. Code Enforcement Officer/Lamoine Planning Board

Case Summary – The appellant, Anthony Benincasa is a principal of Marlboro by the Seas LLC which owns property on Lorimer Road within close proximity of a property owned by Barry Balach and Paula McIntyre. In the summer of 2014 the appellant requested that the Lamoine Code Enforcement Officer find Mr. Balach and Ms. McIntyre in violation of the Lamoine Building and Land Use ordinance on two matters:

A. Mr. Balach and/or Ms. McIntyre placed a large, self-contained recreational vehicle on their property and lived in it for more than 30-days during the calendar year, without obtaining a permit as required by the Lamoine Building and Land Use Ordinance.
B. The Lamoine Road Commissioner issued an after-the-fact road opening permit for the Balach/McIntyre property on Lorimer Road without a waiver being issued by the Lamoine Planning Board.

The Lamoine Code Enforcement Officer advised, orally, that the Lamoine Building and Land Use Ordinance has been interpreted in the past to mean that an RV must be occupied for 30-consecutive days to be in violation. No notice of violation was issued to Mr. Balach/Ms. McIntyre, nor has the Code Enforcement Officer directly observed that the RV was in fact occupied for either 30-consecutive or 30-cumulative days.

The Code Enforcement Officer revoked the road opening permit issued by the Road Commissioner. The Lamoine Planning Board then issued a waiver, authorizing the Road Commissioner to issue a second road opening. The Road Commissioner then re-issued the permit.

The Lamoine Board of Appeals met on October 1, 2014 and found the appellant had standing and that the appeal was timely filed. The Board of Appeals chose members Ohmart, VanAmringe, Crotteau and Bender to hear the case on November 5, 2014. Member Bender was unable to attend the hearing. The remaining three members were present at the November 5, 2014 meeting.

Findings of Fact – Based on the evidence presented, the Board of Appeals finds the following facts:

A. Permit required for using a Recreational Vehicle as a dwelling unit for more than 30-days.

1. The Lamoine Building and Land Use Ordinance (Part II, Section 10, § B) reads as follows: ***" Recreational Vehicles Used As Dwelling Units***

   Recreational Vehicles used as dwelling units on a lot for more than 30-days must obtain a construction permit"
2. Nowhere in the above referenced ordinance is there any modification to provide guidance on whether 30-days shall mean 30-consecutive days, 30-days per calendar year, or any other interpretation of 30-days.
3. The lot owned by Mr. Balach and Ms. McIntyre, contains less than 80,000 square feet of land area.
4. The lot owned by Balach and McIntyre is located primarily in the Rural and Agricultural Zone, though a very small portion of the lot may be less than 250-feet from the high water mark, and within the Limited Residential Shoreland Zone.
5. The minimum lot size per dwelling unit in the Rural and Agricultural Zone is 40,000 square feet. (Building and Land Use Ordinance, Part I, Section 4 Table I)

B. Issuance of 2nd Road Opening Waiver by Planning Board

1. The Lamoine Building and Land Use Ordinance (Part 1, Section 5, § C) reads (in part) as follows: . "*Each lot shall be accessed by no more than one curb cut unless a waiver is granted by the Planning Board.* "
2. The Building and Land Use Ordinance does not offer any additional guidance regarding the criteria to be used for either requesting or approving such a waiver.
3. The Planning Board, upon application by Balach/McIntyre, issued a waiver for a second opening on Lorimer Road on August 13, 2014.
4. The Road Commissioner re-issued the permit following the Planning Board Waiver.
5. No evidence was received indicating that a second entrance on the aforementioned property would negatively impact either traffic flow or drainage on Lorimer Road.

Conclusions of Law

A. Interpretation of Permit Requirement when an RV is used as a dwelling unit. The Board of Appeals unanimously finds that any Recreational Vehicle occupied for more than 30-days during a calendar year must obtain a construction permit from the Lamoine Code Enforcement Officer. The minimum lot size for such an RV shall be the same per unit as a single family dwelling (40,000 square feet). The Lamoine Code Enforcement Officer's interpretation of a permit requirement only if the RV is occupied for 30-consecutive days is incorrect.

B. Issuance of waiver of 2nd Road Opening – The Board of Appeals unanimously finds the Lamoine Planning Board was correct to issue such a waiver allowing a 2nd road opening as noted in the Lamoine Building and Land Use Ordinance.

This decision is dated December 9, 2014. Parties to this decision and notice to be provided to:

Anthony Benincasa (Appellant, represented by Attorney Edmond Bearor)
Barry Balach/Paula McIntyre (property owners)
Michael Jordan, Code Enforcement Officer, Town of Lamoine
Lamoine Planning Board (John Holt, Chair).

This decision may be appealed to Maine Superior Court within 30-days.

Signed:

James Crotteau | Jon VanAmringe | Cecilia Ohmart

The Lamoine Board of Appeals