

## Notice of Decision

### **Mason v. Lamoine Code Enforcement Officer [Denial of Permit]**

**Case Summary** – On or about 27 October 2016 Carol Mason prepared an application to construct an addition to their property in Lamoine, 131 Marlboro Beach Road, (map 16, lot 3.) On the 28<sup>th</sup> of November the Construction Application was received at the Town of Lamoine office.

The Application was reviewed by the Lamoine Code Enforcement Officer. On 30 November the Construction Application was denied. The specific reason for the denial is that “The proposed project does not meet the set-back required in the Lamoine Building and Land Use Ordinance, Section 4, Sub Section I Paragraph 2 – I found the setback for the proposed addition is less than 50 feet from the edge of the Marlboro Beach Road Right of Way.” For purposes of the BLUO, 50 feet from the edge of the Road Right of Way is equivalent to 75 feet from the Center Line of the Road.

The applicant filed an Appeal with the Lamoine Board of Appeals within the prescribed 30 days. A hearing on the appeal was held on 19 January 2017. Mason v. Lamoine Code Enforcement Officer [Denial of Permit]. At that meeting there were certain administrative items discussed. It was agreed that at the next meeting there would be a hearing on the appeal.

Chair Fenton briefly summarized the Appeal and the Board considered the following issues:

- Determination of Jurisdiction – *Agreed*
- Determination of standing of Applicant – *Agreed*
- Timeliness of Receipt of Appeal – *Dates of application for Permit; denial by CEO and filing of Appeal were noted. Agreed that Appeal was timely.*
- Poll Board for Conflicts of Interest – *Mr. Fowler indicated that he had previously measured the property for location of a Septic facility. After discussion among the Board, it was determined that since these matters were not in contention in this Appeal, that this did not create a Conflict of Interest for Mr. Fowler. However, subsequently Mr. Fowler did recuse himself from this Appeal.*

- Determination of Quorum – make-up of hearing board - *Hearing Board will consist of a Quorum of the Lamoine Board of Appeals, who are present at this preliminary meeting: Messrs. Fenton, Jordan and VanAmringe*
- Type of Hearing (de novo or administrative appeal) – *As requested by the Appellant, this hearing will be an administrative appeal.*
- *It was noted in the Application for Appeal, that Appellant also indicated a request for Variance. After discussion with Appellant’s representative, the Board agreed that this Application was an Appeal of the denial of permit by the CEO, not a request for Variance.*
- Rules of Procedure – *per the Board’s standard practice, at the prospective Hearing, they will recognize first the Appellant, then the Code Enforcement Officer and any other parties of interest. Following, at the same meeting or thereafter the Board will discuss the matter, consider findings of fact, request further information, consider conclusions of law, and then render it’s decision.*
- Time and location of hearing(s) – *Both parties agreed with the Board that the Hearing will be held at 6:30 PM on 14 February 2017 at the Lamoine Town Office. Town Administrator Stu Marckoon will formally notify all parties and make formal Notice of the Hearing.*
- The above matters relating to *Mason v. Code Enforcement Officer*, were all considered by the Board and Agreed 4-0.

During the hearing on 14 February it was noticed that the Construction Application contained an error. On the first page of the Application there is the question –“Are current uses non-conforming?” The NO box was checked. Upon examination of the issue it was agreed by both parties that the use is non-conforming. Both parties also agreed that the residence is presently 48 feet from the centerline of the Marlboro Beach Road. The residence was re-built in 2003. Originally, the proximity to the centerline of the road was 58 feet. During the re-modeling a porch was added that further reduced that distance from 58 to 48 feet. At that time, the then incumbent CEO issued the permit for the re-model, to upgrade a non-conforming property that already was too close to the road boundary and road centerline.

The Construction Application, Denial of Construction Permit by CEO and Appeal to the Board of Appeals were reviewed within context of the current Lamoine Building and Land Use Ordinance dated 10 June 2014 [BLUO]

The requested proposed addition would be 58 feet from the centerline of the road – same distance at which the original structure was located. The application showed a one-story addition to the residence measuring 418 square feet [22 ft. by 19 ft.]. The 2017 request for permit is intended to increase the existing building footprint [1,731 square feet] by 24% [418 square feet], with the addition, no closer to the road, but still non-conforming. The building addition is at least ten feet further from the road than the existing structure. The size of the proposed addition is within the 30% increase allowed on non-conforming properties as stated in the Lamoine Building and Land Use Ordinance, specifically Section 5, Sub Section I.

Both Appellant and CEO agree with measurements and location of existing and proposed buildings on the property.

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

- The Lamoine Building and Land Use Ordinance of 10 June 2014 only addresses issues relating to Non-Conforming properties in Section 5, Sub Section I:

**Non-Conforming Structure:**

If any portion of a structure does not meet the dimensional requirements of the Building and Land Use Ordinance, that portion of the structure shall not be expanded by more than 30% in floor area or volume.

- The proposed addition meets those requirements.

**Conclusions of Law**

The BLUO is not specific and largely silent as to how and within what restrictions [other than *area or volume*] an existing non-conforming structure may be altered. There are many structures in Lamoine that are “too close” to the Right of Way or Centerline of a Road.

The current Shoreland Zoning Ordinance [approved 16 March 2011] is more specific as to expansion of non-conforming structures and provides some guidance as to the intention of the BLUO:

- A non-conforming structure may be added to or expanded ... if such addition or expansion does not increase the non-conformity of the structure.
- Any portion of a structure ... that is less than the required setback ... may be expanded, as measured in floor area or volume, by less than 30% during the lifetime of the structure.

It is therefore necessary that the Board of Appeals must consider the reasonable intent of the BLUO with respect to this Appeal and treatment of non-conforming structures though out the Town of Lamoine.

The Board of Appeals unanimously finds that the Code Enforcement Officer's denial of a Construction Permit was in error. Finding therefore in favor of the Appellant. This decision is dated 30 May 2017.

Parties to this decision and notice to be provided to:

Carol Mason, Appellant  
Edward Gallegos, Lamoine Code Enforcement Officer

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

Signed for The Lamoine Board of Appeals:

*/s/ Hancock Fenton*

*/s/ Michael Jordan*

*/s/ Jon VanAmringe*

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Hancock Fenton

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Michael Jordan

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Jon Eric VanAmringe