



Lamoine Board of Appeals

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Moldawer v. Code Enforcement Officer (II) Findings of Facts

1. In 2019 Appellant filed an appeal to this Board of the determination by the CEO of “no violation” of the building height limitation in the BLUO of a house erected in 2019 by Kathryn and Thomas True on Lot 48 Map 16.
2. Following public hearings, on October 29, 2019, this Board upheld Appellant’s appeal “insofar (sic) as the CEO did not correctly interpret the Building Height definition in the BLUO because she did not calculate the distance between the highest point on the structure to the original grade versus the highest point on the structure to the finished grade to determine if there was a difference.” Specifically the Board found that in making her first determination of “no violation” of the BLUO building height limit, the CEO measured the height of the True House only from the highest point on the structure to the average final or finished grade, instead of also measuring the height of the True House from the highest point of the structure to the average grade of the original ground adjoining the building and comparing the results as required in the BLUO. (The BLUO defines “Building Height” as “the vertical distance between the highest point of the structure and the average final grade around the foundation, or the average grade of the original ground adjoining the building, whichever is greater.”)
3. The Board then “remand[ed] this matter to the CEO for reconsideration” based upon its ruling in upholding the appeal.
4. No appeal has been taken from said October 29, 2019 rulings of the Board to the courts.
5. After October 29, 2019, and as explained by the CEO in her “Notice of Re-Consideration” that was submitted to this Board in answer to this appeal, instead of reconsidering her height determination in a manner consistent with the BLUO as the Board directed, the CEO disregarded the Board’s ruling and redetermined that there was no violation of the BLUO. Moreover, the CEO made that redetermination without measuring the height as the Board had directed her to do.

Conclusions of Law

The CEO erred in her redetermination that there was no violation of the building height limitation in the BLUO in the building of the Kathryn and Thomas True house, specifically she erred:

- a) by asserting that she is not bound by the October 29, 2019 decision of this Board that she had misinterpreted and misapplied the Building Height Limitation of the BLUO;

- b) in relying on the Maine Uniform Building and Energy Code (MUBEC) in her redetermination of the height of True house, as MUBEC is not applicable to such a determination; and
- c) by not applying the building height limitation in the BLUO as previously interpreted by this Board.

Approved this 27th day of October, 2020

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

Jon VanAmringe, chair pro-tem
Lamoine Board of Appeals