

March 4, 2020

Griff Fenton, Chair  
Jon Van Amringe, Chair Pro Tem  
Board of Appeals  
Town of Lamoine  
Lamoine, Maine 04605

Re: Moldawer v. CEO

To Mr. Fenton, Mr. VanAmringe and the Board of Appeals:

Tonight, the Board of Appeals will meet again on the appeal raising the question of whether the Code Enforcement Officer acted lawfully in her most recent determination that the True house in Marlboro does not violate the Building Height Limitation in the Town's BLUO. As this is only a meeting, held to receive legal advice from the Board's attorney, James Collier, and is not a hearing, I understand that no action will be taken by the Board in regard to my appeal tonight.

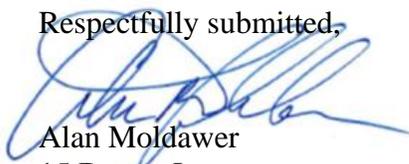
I respectfully ask two things of the Board at this time. First, I request that any hearing on my appeal be set at a date in the month of May or later to allow for the compiling of a complete administrative record and to give the parties notice and an opportunity to be heard on the appeal. My wife and I, who are now legal residents of Maine, will be returning home to Lamoine from Maryland late next month.

Secondly, I respectfully remind the Board of the significance of the decision it will be asked to make in regard to this appeal of the CEO's disregard of the Board's October 29, 2019 decision. The Maine Supreme Court has attached the same importance to a CEO's determination of no-violation as to a determination of violation. Whether that determination is the initial one made last April or a "re-determination" made subsequent to the Board's October 29 decision, I believe it is properly appealable to this Board. But what makes the issues now facing the Board even more significant—for the Board and for the Town itself—is the question of whether a CEO is free to disregard a Board of Appeals decision, and, in effect, overrule the Board.

The Maine Supreme Court has not left that question open to interpretation. Justice Alexander in the Brackett case cited in prior memoranda, perhaps said it best: "Keeping illegal building activity from neighborly or public scrutiny, even where it may occur with the complicity of a code enforcement officer, does not grant the illegal activity immunity from appeal or enforcement. . ." Add to that what should be equally axiomatic, that a CEO is not free to treat a clear-cut decision of the Board of Appeals on her interpretation of the law as a mere "suggestion" to be disregarded if she chooses.

Thank you very much for your consideration of this letter.

Respectfully submitted,



Alan Moldawer  
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Lamoine, Maine 04605