

July 23, 2020

Via e-mail: town@lamoine-me.gov
Hancock "Griff" Fenton, Chairman
Lamoine Board of Appeals
Town of Lamoine
606 Douglas Highway
Lamoine, ME 04605

Re: Administrative Appeal Filed by Thomas True

Dear Chair Fenton:

Our firm represents Jonathan and Jessica Zdziarski, the new owners of the property located at 102 Marlboro Beach Road. The property was purchased from Richard and Marion Arnold, following confirmation from the Code Enforcement Officer that there were no land use violations. Enclosed is a supplemental memorandum on the relevant issues.

Please let us know if you have any questions.

Thank you.

Sincerely,



Katie R. Foster
KRF/leb
Enclosure

cc: Jonathan Zdziarski
Jessica Zdziarski

[R2317667 1]

TO: Town of Lamoine Board of Appeals
FROM: Rudman Winchell, Attorneys for Jonathan Zdziarski and Jessica Zdziarski
RE: Supplemental Memorandum Regarding Tom True Appeal dated April 14, 2020
DATE July 23, 2020

1. The Town of Lamoine Building and Land Use Code requires an administrative appeal be filed within thirty days of a Code Enforcement decision.

The Town of Lamoine Building and Land Use Ordinance (“Ordinance”) provides that “[t]he Board of Appeals, upon written application of an aggrieved party within 30 days of a Code Enforcement Officer or Planning Board determination, and after public notice, may hear appeals of such determinations on administrative grounds.” BLUC § 8 (B) 2019. The operative Code Enforcement Officer decision in this matter is the Certificate of Occupancy, issued on January 26, 1998, to Richard and Marion Arnold. The Certificate of Occupancy states, “[h]aving found the work done under the Building Permit to have been performed in substantial compliance with the provisions of the Land and Building and Land Use Ordinance, this Certificate of Occupancy is hereby granted.” In 1998 the Town of Lamoine made the determination that the structure at 102 Marlboro Beach Road, now owned by Jonathan and Jessica Zdziarski, met the applicable standards of the Land and Building Code. An aggrieved party would have needed to have appealed that determination within thirty (30) days.

Following a complaint by Mr. Thomas True to the Town of Lamoine in September 2019, the Code Enforcement Officer, Rebecca Albright, did research and inspected the property. Prior to the sale of this property, the Town confirmed for Jonathan and Jessica Zdziarski that there were no outstanding violations. The finished attic was inspected as part of this process in 2019 and is not a new addition since the Certificate of Occupancy was issued in 1998. Ms. Albright’s April 13, 2020 confirmation that there are no violations regarding this property is not the operative decision for purposes of this appeal and therefore, this appeal should be dismissed as untimely.

2. The Applicant for the Administrative Appeal is not an Aggrieved Party under the Town of Lamoine Building and Land Use Code.

The Ordinance defines Aggrieved Party as, “a person whose land is directly or indirectly affected by the grant or denial of a permit or variance under an ordinance, a person whose land abuts land for which a permit or variance has been granted, or a group of 5 or more citizens of the Town who represent an interest adverse to the grant or denial of such permit or variance.” BLUC § 17 (B). This definition makes clear that an Applicant’s Aggrieved Party status turns on the grant or denial of a permit. The Building Permit for this structure was granted on April 28, 1997. The Applicant, Mr. Thomas True, did not own property in the Town of Lamoine until July 2019.

“Whether a party has standing to bring an administrative appeal before an appeals board depends on the language of the governing ordinance.” *Nergaard v. Town of Westport Island*, 2009 ME 56, 973, ¶ 12 A.2d 735. Applying the relevant sections of the Ordinance, it is clear that the Applicant is not an Aggrieved Party and that this appeal is frivolous and untimely. Therefore, we would respectfully request that the Applicant’s administrative appeal be dismissed.