



Lamoine Board of Appeals

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Lamoine, ME 04605
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town@lamoine-me.gov

Minutes of October 13, 2008

Draft

Chairman Hancock “Griff” Fenton called the meeting to order at 7:01 PM

Present were: Appeals Board members Reginald McDevitt, John Wuorinen, Hancock Fenton, Jay Fowler, James Crotteau, Secretary Stuart Marckoon, Planning Board member Michael Jordan, appellant Wayne Wright and appellant representative Steve Salsbury

The meeting was televised and recorded by Lamoine Cable TV

Chairman Fenton said the last meeting left matters waiting for a letter from the Army Corps of Engineers regarding their stands on the allowed width for the subdivision road. He said Board members received a copy of a letter that afternoon via e-mail.

Minutes – Mr. McDevitt moved to approve the minutes of September 8, 2008 as written. Mr. Crotteau 2nd. **Vote in favor was 5-0.**

Request for Variance by Wayne Wright (Map 4 Lot 34)

Army Corps of Engineers (ACE) Letter – Steve Salsbury supplied the letter to the Board in written form and said the board could read the letter itself and decide. Several board members said they were impressed by the speed of the response by the ACE. Mr. Salsbury said the woman from the ACE was very accommodating. The letter is as follows:



REPLY TO:
ATTENTION OF:

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

September 24, 2008

Regulatory Division
CENAE-R-55
Corps Permit #NAE-2007-447

Stephen Salsbury
Herrick & Salsbury Inc.
P.O. Box 652
67 Franklin Street
Ellsworth, Maine 04605

Dear Mr. Salsbury:

This letter is in response to your recent inquiry regarding your client's Corps of Engineers permit #NAE-2007-447 and the proposal for additional wetland fill to accommodate the widening of the access drive located within the Partridge Cove Road Subdivision at Lamoine, Maine. This modification request is reportedly being made to answer an inquiry from the town.

As you are aware, there are a number of important aquatic resources on site to include freshwater wetlands, streams, and a valuable vernal pool complex. Avoidance and minimization of impacts to these resources was critical to the decision to issue a permit for the project. Widening the road would require additional placement of fill, resulting in further impact to the important resources on site and in particular, indirect impacts to the ecology and long-term viability of the vernal pool(s).

The Corps maintains that waterways and wetlands are vital areas that constitute productive and valuable public resources, the unnecessary alteration or destruction of which is to be discouraged. Further, Federal regulations state that filling of these resources shall not be permitted unless the applicant clearly and thoroughly documents the need for the fill and alternatives considered. In this case, the previously authorized design satisfies the basic project purpose; we see no justification for widening the road; and the long-term and cumulative impact to aquatic resources is excessive.

Without a clear and thorough documentation of the need for the additional fill, alternatives considered, and mitigation possibilities, it is doubtful that we could issue a permit for the modification request. Our position is supported by the US EPA and US FWS. Due to environmental constraints, we would support your pursuit of a waiver from the town to retain and maintain the existing access drive and to forgo the additional impacts.

If you have any questions on this matter, please contact me at 207-623-8367 ext. 2 at our Manchester, Maine Project Office.

Sincerely,



LeeAnn B. Neal
Project Manager
Permits & Enforcement Branch
Regulatory Division

cc.

Wayne Wright
P.O. Box 88
Ellsworth, Maine 04605

Mr. Wuorinen read the last paragraph of the letter aloud. Chairman Fenton said that was what the Board had asked the appellant to furnish. Mr. Crotteau suggested that the Board follow the same procedure it had started the previous meeting in regard to the variance request.

Mr. Crotteau moved to consider finding that the ***Land in question cannot yield a reasonable return unless the variance is granted.*** He said he thinks that the Board agreed that given the way the wetlands are situated that unless the road goes across, it is not possible to access the land, and it is not possible to run a road anywhere else. He said previously it was not clear that a permit could not be granted for a wider road. He said the key sentence was that "it's doubtful", and that the ACE could issue a permit. He asked Mr. Salsbury if he gave ACE the specifications for the road required by the town. Mr. Salsbury answered that he had. Mr. Crotteau said that's what he was looking for at the last meeting.

Mr. Wuorinen said he understands the law does not have to do with a financial yield from the land. He said it looks as though the land is not useful without an access road. Mr. McDevitt said he was comfortable with the ACE letter for now. Mr. Fowler said the letter kind of clears the board. He said without a road, and even if it's a matter of a foot or two of width, the land is useless. He said the appellant has a road that is one-half foot wider than the average subdivision road. He said if someone else has a similar situation, the Appeals Board would then have a leg to stand on. Mr. Crotteau said that was a really good point. He said if the variance were granted, the letter is very specific to this project. Chairman Fenton said each item in the variance application should be voted upon individually.

Mr. Crotteau moved to determine that the land in question cannot yield a reasonable return unless the variance is granted. Mr. Fowler 2nd. **Vote in favor was 5-0.**

Mr. Crotteau moved to find the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. Mr. Wuorinen 2nd. **Vote in favor was 5-0.**

Mr. Crotteau moved to find the granting of a variance will not alter the essential character of the locality. Chairman Fenton 2nd. **Vote in favor was 5-0.**

Mr. Crotteau moved to find the hardship is not the result of action taken by the appellant or a prior owner. Mr. McDevitt 2nd. **Vote in favor was 5-0.**

Chairman Fenton said as he understands the votes, the variance would be granted. Mr. Crotteau moved to grant the variance as requested. Mr. McDevitt 2nd. Chairman Fenton said a future Planning Board review might wish to add the Army Corps of Engineers to some sort of checklist, and that might be helpful to townspeople. **Vote in favor was 5-0.**

FINDINGS OF FACT – A discussion followed in regard to the Army Corps of Engineers jurisdiction in relation to the shore, and the width of Old Schoolhouse Lane. Mr. Wuorinen said in reading the Planning Board decision, that board found favorably on all sections of the Wright subdivision with exception of the road width. He said the Appeals Board variance could serve to short circuit that process unless there was an objection. A short discussion about the Planning Board process followed.

Chairman Fenton said the Appeals Board has granted a variance and was not asked to consider any other part of the Planning Board's decision. He said the facts could be summed up as follows:

- The appellants applied for subdivision and site plan review approval and received initial approval from the Lamoine Planning Board
- Following review by the Army Corps of Engineers and the Maine Department of Environmental Protection, the appellants revised their subdivision plan to accommodate the federal and state wetlands impact requirements
- The revised plan submitted ran afoul of the town ordinance in regard to the road width requirement.
- The appellants claimed a hardship and requested a variance
- After review of the facts by the Board of Appeals, the Board found the land could not yield a reasonable return without an access road.
- It is understood this is a one-time variance unique to the appellant and not a blanket ruling applicable to any other lot in town.
- The board found the appellant has gone through every hoop and the only way to access this land was in the configuration proposed by the appellant.

CONCLUSIONS OF LAW – The Board discussed the applicable laws surrounding the variance request and concluded that all laws had been met. The Board agreed the appellant had a right to subdivide his land. They asked that the proper references be generated for the final conclusion.

Mr. Crotteau said the key is the letter from ACE. He said the Board looked for something that showed the project could not go forward if it followed Lamoine's ordinance. He said because of the nature of this particular piece of property, that turned out to be the case. He said if that is put into the findings of fact, it would show there was no way the project could move forward. Chairman Fenton said the decision should not be construed to encourage others to subdivide their land to get around the ordinance.

Chairman Fenton asked if this goes back to the Planning Board. Mr. Marckoon said it would, showing that the variance was granted. He asked if it was the desire of the board for him to draft the formal findings of fact based on the previous offering from Chairman Fenton and to draft the conclusions of law. The Board said that was their desire. Mr. Marckoon said he would do so in the coming days, send the drafts via e-mail for comment, and prepare a final version for the chairman to sign.

There being no further business, Mr. Crotteau moved to adjourn the meeting and Mr. Wuorinen 2nd. **Vote in favor was unanimous at 7:26 PM**

Respectfully submitted,

Stuart Marckoon, Secretary
Lamoine Board of Appeals