



# Lamoine Board of Appeals

606 Douglas Hwy  
Lamoine, ME 04605  
(207) – 667-2242  
town@lamoine-me.gov

## TOWN OF LAMOINE NOTICE OF DECISION – VARIANCE

To: Wayne Wright  
PO Box 88  
Ellsworth, ME 04605

Dear Mr. Wright,

This is to inform you the Lamoine Board of Appeals has acted on your application for a variance as follows:

### **Findings of Fact:**

1. Name of Applicant: Wayne Wright
2. Mailing Address: PO Box 88, Ellsworth, ME 04605
3. Location of property for which variance was requested: Map 4 Lot 34 (off Partridge Cove Road)
4. Zone in which property is located: Rural & Agricultural Zone
5. The applicant has a legal interest in the property by virtue of a deed filed in Book 4471 Page 166 of the Hancock County Registry of Deeds.
6. The applicant proposed an 11-lot subdivision on the subject property to be served by a road.
7. The applicant sought a variance from the required dimensional standards of the road of two 10-foot travel lanes and two 2-foot parking/delivery lanes contained in Section 12F of the Lamoine Building and Land Use Ordinance.
8. The land is currently undeveloped.
9. The conditions and character of the neighborhood are residential housing and undeveloped land.
10. The property that borders State Route 204 (Partridge Cove Road), contains a significant amount of wetland, but the land beyond that wetland is able to support residential dwellings.
11. The application requested an Undue Hardship Dimensional Variance pursuant to 30-A M.R.S.A. § 4353(4)
12. On September 8, 2008, the Lamoine Board of Appeals conducted a public hearing on this application for a variance. The Board also met on October 13, 2008 to deliberate on this application and to prepare Findings of Fact and Conclusions of Law.
13. Additional Facts:
  - a. On January 24, 2007 the Lamoine Planning Board approved a subdivision on tax map 4 lot 34 submitted on behalf of Wayne Wright by Stephen Salsbury. The subdivision consisted of 8 developed lots, one common lot for fire protection purposes, and approximately 22.5 acres of remaining land.
  - b. Following approval by the Planning Board, the Maine Department of Environmental Protection and the US Army Corps of Engineers determined that vernal pools and wetlands impacted lots 1 & 2 and these lots could not be developed. Additionally, the road serving the subdivision was deemed to have too much of an impact on the wetland.

- c. An application from Mr. Wright and Mr. Salsbury dated March 20, 2008 was submitted to the Lamoine Planning Board for a 13 lot subdivision with a common lot for fire protection and remaining land of approximately 12.8 acres.
- d. On May 20, 2008, the applicants revised their submission for Subdivision and Site Plan Review to 11 lots, with a common lot for fire protection and approximately 17.21 acres of remaining land.
- e. On June 3, 2008, the Planning Board found both the Site Plan Review and Subdivision applications complete and scheduled a public hearing for July 1, 2008.
- f. On July 1, 2008, immediately following the public hearing, the Planning Board, following the review criteria found favorably with one exception that the Subdivision met the Lamoine Building and Land Use Ordinance. That one criteria was Section 12F (Minimum Standards for Street Design and Construction which states as follows: *Width of streets shall be two (2) ten (10) foot traffic lanes and two (2) two (2) foot parking and delivery lanes abutted on the outer edges by a tapered, compacted soil with a 3 to 1 slope.*). The Planning Board also found favorably with one exception after following the review criteria of the Site Plan Review Ordinance that the proposed subdivision met the requirements of the ordinance. That exception was section J3 (Vehicular Access which states as follows: *Minor road(s). One or more minor roads, to be constructed by the developer according to the standards of this ordinance, which shall serve the development.*). Based on these findings, the Planning Board denied the subdivision and site plan review permits for the newly proposed project.
- g. Notice was given to the applicants of denial in decisions dated July 3, 2008.
- h. On August 11, 2008, the Lamoine Board of Appeals met and found that application was timely and within the jurisdiction of the board, that the appellants (Wright/Salsbury) had standing, and that an adequate number of Board members without conflicts of interest were available to hear the request. Following adjournment of the formal meeting, members of the Board conducted an onsite visit of the subdivision in question. It was noted that the road construction had been completed to a standard of two 9-foot travel lanes each with a 1-foot shoulder on a 3:1 slope.
- i. On September 8, 2008 following the public hearing, the Board of Appeals began consideration on the four criteria for a variance. The first question, whether the land in question could yield a reasonable return if the variance is not granted, generated a preliminary vote against the appellants. None of the other 3 questions were considered at this meeting. The appellants were instructed to inquire from the Army Corps of Engineers and/or the Department of Environmental Protection whether the width of the road could be increased to accommodate the Lamoine Building and Land Use Ordinance.
- j. On October 13, 2008, the appellants provided a copy of a letter (in file) to this Board from LeeAnn B. Neal, Project Manager of the Army Corps of Engineers stating “it is doubtful that we could issue a permit for the modification request”

### **Conclusions of Law**

Based upon the facts stated above and for the reasons that follow, the Board concludes that:

The application has shown that strict application of the Building and Land Use Ordinance and the Site Plan Review Ordinance to the applicant and the applicant’s property would cause undue hardship.

- a. The land in question cannot yield a reasonable return unless a variance is granted; **The Army Corps of Engineers states that it is doubtful it would issue a permit for a modification request for a larger road impacting the wetlands, putting said road at odds with the above referenced ordinance. A road is necessary through the wetlands to access the property in question.**
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; **This property is segregated from the only vehicular access road by wetlands.**
- c. The granting of a variance will not alter the essential character of the locality. **The area will remain a rural neighborhood with residential structures.**
- d. The hardship is not the result of action taken by the applicant or a prior owner.

### **DECISION**

On the basis of the above Findings of Fact and Conclusions of Law, the Board of Appeals voted to grant the application for variance, subject to the following Conditions of Approval:

1. The road serving the proposed Subdivision shall consist of two 9-foot travel lanes with two 1-foot shoulders, said shoulders having a slope of no less than a 3:1 ratio.

### **RECORDING OF VARIANCE**

As required by 30-A M.R.S.A § 4353(5) the applicant must record a certificate of variance in the Hancock County Registry of Deeds within 90 days of this notice or else this variance shall be void.

**APPEALS**

Parties aggrieved by this decision may appeal it to Superior Court within 45 days from the date of decision pursuant to 30-A M.R.S.A. § § 2691 and 4353 and Maine Rules of Civil Procedure, Rule 80B

Date: October 31, 2008

/s/ Hancock G. Fenton, Chair, Lamoine Board of Appeals

/s/ James Crotteau, Member

/s/ Jay Fowler, Member

/s/ John Wuorinen, Member

/s/ Reginald McDevitt, Member

Lamoine, Maine Board of Appeals