



Lamoine Board of Appeals

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Towne v. Code Enforcement Officer Filed January 26, 2023

Findings of Fact

Lamoine resident Terry Towne filed an application of appeal regarding an action by the Code Enforcement Officer made on January 12, 2023. The application stated that appeal was of the “CEO determination that there is no basis of a violation of BLUO Section 4.1, Minimum Lot Size, for a second dwelling unit on Map 14 Lot 28, owned by Christine Cohen”, after a January 11, 2023 written complaint by Terry N. Towne.

The Board of Appeals (BOA) met on March 1, 2023 to consider preliminary matters concerning the complaint. Among those decisions were to find that the BOA has jurisdiction, the appellant has standing, the appeal was timely filed, no BOA member has a conflict of interest, and there is a quorum. The BOA voted to set March 13, 2023 as the date to hear the appeal at the Lamoine School.

Evidence from the parties involved was submitted by March 8, 2023.

The BOA met as scheduled at the Lamoine School on March 13, 2023.

The following facts are pertinent in this matter.

- Mr. Towne made a complaint to Code Enforcement Officer (CEO) Rebecca Albright on January 11, 2023, alleging that an “Additional (Second) Dwelling Unit without the lot having the required shore frontage, lot area, and road frontage. SZO, Seciton (sic) 15.A.5 BLUO Section 4.1.2”
- CEO Albright responded to the complaint on January 12, 2023, noting that the current owner, Christine Cohen, purchased the property on June 17, 2019. Several exhibits were included with the response, including a property card with a notation dated 1991 regarding a second dwelling unit on site.
- Submissions from Mr. Towne attempted to document the parameters under which previous owners were granted permission to construct a bedroom in the garage. The permit granted in 1990 to the former owner (Weisenberger) stipulated that no kitchen area was to be included in the garage.
- Testimony during the hearing from the Code Enforcement Officer’s Attorney (Daniel Pileggi) allege that the appellant lacks standing in the matter. The written communication from Mr. Pileggi says that for the BOA to consider an application, it must be from an aggrieved party within 30 days of a Code Enforcement Officer’s determination.
- Lamoine’s Building and Land Use Ordinance (BLUO) 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 (or) a person whose land abuts land for which a permit or variance has been granted.”

- There were no permits granted in 2022 or 2023 for any structure that the appellant has made a complaint about, nor has the appellant claimed any impact from a decision beyond the impact to the general public.
- Permits were granted on this property in 1990, 2004 and 2014, and the timeframe to appeal the granting of these permits has long ago expired.
- The CEO has chosen not to take any land use enforcement action against the current owners of the property in question.

Conclusions of Law

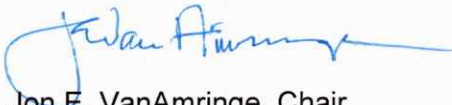
The Lamoine Board of Appeals makes the following conclusions of law:

- Appellant Terry N. Towne does not have standing as an aggrieved party in this matter. As noted in the findings of fact, Mr. Towne is neither an abutter nor has suffered any particularized injury from the presence of a second dwelling unit on the property in question.
- The Board of Appeals does not have jurisdiction to conduct an appellate review of a discretionary prosecutorial decision. Citing Salisbury v. Town of Bar Harbor, (2002 ME 13) the CEO's attorney concludes that "a municipal official's exercise of prosecutorial discretion is not subject to appellate review."
- The current owner of Map 14 Lot 28 (Christine Cohen) had the right to rely on the town's knowledge and acceptance of the structures that existed on the lot in question for many years prior to the purchase in 2019.

The Board of Appeals hereby denies the appeal filed on January 12, 2023 by Terry N. Towne against the Code Enforcement Officer in regard to Map 14 Lot 28.

So voted on March 13, 2023 by the Lamoine Board of Appeals (members voting Jay Fowler, Brett Jones, Jon VanAmringe, Gary Loft and Michael Jordan) 5-0.

Respectfully submitted,



Jon E. VanAmringe, Chair
Lamoine Board of Appeals