



Lamoine Board of Appeals

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Minutes – September 10, 2020

Chairman Griff Fenton called the meeting to order at 6:33 PM.

Present were: Appeals Board members Brett Jones, Hancock “Griff” Fenton, Jay Fowler, Larissa Thomas, Jon VanAmringe; Appellant Jeannine Lawser, Code Enforcement Officer Rebecca Albright, and town Administrative Assistant Stu Marckoon.

Chairman Fenton said Mr. Jones will be acting as the voting member tonight as member Michael Jordan has recused himself from the matter before the board.

Minutes – July 24, 2020 – Mrs. Thomas moved to approve the minutes as presented. Mr. Jones 2nd. **Vote in favor was 5-0.**

Lawser v. Code Enforcement Officer – Chairman Fenton thanked Mrs. Lawser for the packet of information provided to the board. He asked CEO Albright if it was correct that no building permit was issued for the structure in question. CEO Albright said she received a complaint about the new deck and went to Mrs. Lawser’s home and spoke with her. She said Mrs. Lawser supplied her with several photographs, including one from many years ago. CEO Albright said she spoke with Attorney Richard Flewelling at Maine Municipal Association who asked if the previous structure had been issued a building permit, and Mrs. Lawser told her it had not. Mrs. Lawser said she the structure did not need one.

CEO Albright said MMA Legal advised that if a structure didn’t originally have a building permit, it was not grandfathered. CEO Albright retrieved a copy of a photo of the steps on the front of Mrs. Lawser’s home and showed it to the Board.

CEO Albright said there is some confusion about what needs a permit and what does not in regard to 100-square feet. She read from Section I of the Building & Land Use Ordinance: *The provisions of this ordinance shall apply to the location of structures, including streets and driveways, on the land and to new construction, reconstruction, conversion to a different use, substantial additions, relocations, and replacement of any building or significant segment thereof, including all trailers, recreational vehicles, and/or manufactured homes when connected to any utility and/or used as a residence for a period of more than 30 days. This ordinance does not require that a permit be obtained for the construction or placement of a dog house, children's playhouse, tool shed, or similar small building having not more than 100 square feet providing such structures meet all other requirements of this ordinance.*

CEO Albright said that would exempt the need for a building permit for a small building, but not for an attached deck. She said the Lawser project is quite beautiful, but located less than the required setback from Douglas Highway.

Mr. VanAmringe asked if a porch is considered part of the main building as opposed to a dog house. He asked if CEO Albright could help with the chart of dimensions which was part of Mrs. Lawser’s submission, and if the CEO had done any measurements. CEO Albright said she did not think that she measured anything.

Mr. VanAmringe said the reason that the deck might be non-conforming is because the home is already closer to the road than the ordinance allows. He said looking closely at the measurements, the deck appears to be 8-feet by 22-feet, which is greater than 100-square feet.

Mr. VanAmringe asked what the road setback requirement is. CEO Albright said it's 75-feet from the center line of the road. Mr. VanAmringe asked how far back the new deck is. CEO Albright said she thinks it's about 60-feet. Chairman Fenton said it's 69-feet, 6-inches. Mrs. Thomas said part of the house would have to be added to the non-conforming expansion calculation. Mr. Jones said that would increase the amount of allowed non-conforming expansion and explained his reasoning. Mr. VanAmringe said a 30% expansion would be allowed, but the structure could be no closer to the road, as that would make it more non-conforming. CEO Albright read from the section of the Building and Land Use Ordinance addressing expansion of non-conforming structures, and a discussion followed.

Mr. Jones said if the expansion of the existing structure was linear, it would not be considered more non-conforming. Chairman Fenton said if the new structure was closer to the road than the existing non-conforming structure it would not be permitted. Mrs. Lawser said in actuality the new structure is further away from the road than what existed prior.

CEO Albright said based on the photograph there were paving stones and planters which were not originally permitted and are not considered structures. Chairman Fenton said flower beds would not be considered a violation. He told Mrs. Lawser that the Code Enforcement Officer issued her a notice of violation for a lack of a building permit. He asked if the non-conformity section requires a permit. CEO Albright again read aloud section I of the ordinance. She referred to a recent case on Douglas Highway where a homeowner wanted to expand closer to the road than allowed, but through discussion expanded laterally to the existing structure's footprint.

Mr. Fowler said the measurements on the submission by Mrs. Lawser are from the longest point to the curve, which makes a difference in the degree of non-conformance. Mrs. Thomas asked whether the board should be talking about this since the CEO did not issue the violation for exceeding the non-conformance allowance. Chairman Fenton said the discussion should be whether a permit is needed.

CEO Albright said until she has an application, she can't see whether the setbacks are adequate. Mrs. Lawser said she didn't feel she had to have a permit after speaking with her contractor. She said the house has been grandfathered since 1975, and the addition is less than 100 square feet. She said they replaced existing grandfathered steps, and did not go closer to the road. She said when looking at the building, they tried to improve a very old house. She said the addition was less non-conforming than the existing structure. She said she thought they were grandfathered.

Mr. Jones said the need to repair the structure preceded the addition. He asked if it was expected they would have to obtain a building permit to repair an existing structure.

Chairman Fenton said ordinances usually address repairs after acts of god such as weather or fire damage. He asked if a permit is required for repairs or for a destroyed building. He said he did not see a section in the Building and Land Use Ordinance that addresses repairs one way or the other. CEO Albright said the owners of a home that burned down off Falcon Lane recently had to go through the permitting process to replace the home. Mr. Jones asked if a repair requires a permit. CEO Albright again read from the Scope section of the Building and Land Use Ordinance. She said if, for instance, a cellar wall fell in and there is a need to repair, that that would be a repair, and historically a permit has not been needed to make repairs inside the home. A lengthy discussion followed.

Chairman Fenton asked if the new porch is attached to the house. Mrs. Lawser said it is attached to the sill. Mr. Jones said he's having a hard time wrapping his head around the remedy that is referred to in the Notice of Violation saying to bring the project into compliance. He said that would possibly necessitate moving the entire structure. He read from the remedy section of the violation notice.

Mr. VanAmringe said he understood the old structure had a rotten sill and to get to it the existing porch/steps had to be moved. He said the repair was done without a permit, and the property owner did not apply for a variance. He said the new porch makes the structure marginally more non-conforming. He said if Mrs. Lawser was told by her contractor that a permit was not needed, that would not be the correct person to make that determination. Mr. Jones said a permit should not be needed to make a repair, but he's not sure if one is needed to replace a like structure with a like structure. He said it's tough to compare what was placed at the property (a porch with steps) with the previous placement of patio stones. Mr. VanAmringe asked if patio stones would be considered a structure. Chairman Fenton said according to the ordinance patio stones would be considered a structure. A discussion followed regarding non-conforming structures.

Mr. VanAmringe said the appellant felt she didn't need a permit because the property was grandfathered. He said there is more structure than there was before. He said he has no objection to people repairing their home so that it doesn't fall down, but the Code Enforcement Officer should have been contacted, with a possible variance request.

Mr. Jones said the issue is what is best for the town. He said he's not sure that it's a good idea to require a permit for repairs. He said it appears the rules have changed regarding non-conforming structures. Mr. VanAmringe again stated that he has no objection to fixing an existing structure, but where the steps were, the appellant made the porch larger by more than 100 square feet. He said she could have asked for a variance. Mr. Fowler said the previous steps only went to the door. He said it looks like about 112-square feet was added going closer to the road. He said the steps were relatively small and did not come out 8-feet from the house. Mrs. Lawser said the platform with the previous steps was 8-feet by 9-feet and had been there for 21-years. She said she stayed within the footprint of what the previous owner had.

Mrs. Thomas said the remedy in the notice of violation is problematic. She said the scope that states no permit is needed for less than 100-square feet only applies to small, stand-alone structures. Chairman Fenton said he agreed and asked what the square

footage was of the steps prior to the demolition and new construction. He said if the steps were being replaced, that should not go into the non-conforming expansion application. He said the real issue is that the appellant must have a permit, and she didn't have one. He said there is no question that a permit is required. He said this is an eye opener; that if one does work on a structure, they should check with the Code Enforcement Officer.

Mrs. Thomas said it was unfortunate that the contractor did not give the appellant good information. She said the board would have to go by what the CEO says but she agrees the remedy may be a little severe. She said a permit is required by the Building & Land Use Ordinance. Mr. Jones said the appellant should apply retroactively for a permit, and to make sure the structure is not made more non-conforming and expands by less than 30%.

Chairman Fenton said all the board can do is rule on the appeal. He said he thinks it has to be denied, because the appellant needs a permit. Mr. Jones said the Board should be as clear as it can be. He said he would be comfortable with a commitment from the Code Enforcement Officer. Mrs. Thomas asked what the potential outcomes would be. She said if the expansion is below the allowed 30%, that would be OK, but what would happen if it exceeds the allowed expansion. Chairman Fenton said the pavers would be considered and the non-conforming area could be reduced by removing the pavers from the lawn. He said there are some remedies.

CEO Albright asked when the previous steps and pavers were installed. Mrs. Lawser said it was about 21-years ago. She said they had to replace the existing, as the structure was crumbling. Mr. VanAmringe shared a story about repairing his deck at his home and not getting a permit. He said if the project was to replace the existing structure only, there would be no harm/no foul. He said the violation said that the appellant did not get a permit, and perhaps something could be creatively done, but nothing can be worked out until there is a building permit application. He asked how big the new deck was.

Mr. Fowler asked about a previous case and whether a building had to be moved because of the proximity of the leach field and a brief discussion followed.

Mr. Jones said the appeal is about the notice of violation and read from the notice. He asked if the appellant is in violation because she did not obtain a permit. Mr. VanAmringe said suppose there had been a permit requested and discussed, unless the town enforces the rules, it doesn't have rules. He said the appellant didn't apply. He said had she applied, there would have been measurements to go by. He said there is nothing relevant on the former steps available. He said the structure appears to have gotten bigger and more non-conforming. He said if there is a permit, it could possibly be done so that it is the least offensive to the ordinance. He said there is more than 100-square feet of other stuff. He said he's not asking to move the building, but he would like to see a way of working this out within the ordinance. He said it would be up to the Code Enforcement Officer to approve a building permit.

Chairman Fenton said whether a permit was issued or requested makes little difference; the ordinance requires a permit. He said perhaps the two parties can get together and work out the details. Mr. Jones said if the Notice of Violation is upheld, the alleged violator doesn't have to do anything. Chairman Fenton said he doesn't agree with that. He said the CEO gave a Notice of violation because there was no building permit. He said the ordinance requires a permit to do the work that was done, and the appellant failed to apply. He said if the Board sustains the Notice of Violation, the board is saying that the appellant did not obtain one, and she might want to discuss obtaining an after the fact permit. He said that CEO could instruct the appellant to take things back to the original grandfathered area. He said that would not be an instruction to move the entire building back.

Mrs. Thomas says the Notice of Violation says that the porch has to be removed. She said the remedy in the Notice could be reconsidered. Chairman Fenton said the Board could recommend a different remedy. Mr. Fowler said he agreed with the Code Enforcement Officer and wasn't worried about the rest of the discussion.

Chairman Fenton said he would entertain a motion to uphold the Notice of Violation. Mr. Fowler said he didn't plan to vote on the matter. Mrs. Lawser said she could submit a permit application retroactively and go from there. She said some of us are lay people and not involved with government for a reason. She said she went with what she thought was right at the time, and never dreamed she would be in violation. Chairman Fenton said most of us have gone through similar situations, and it's disruptive to the family. He said the Board has to go by the ordinance that the town passed. He said it's not an option, but a duty. He said he apologized that the situation is upsetting.

Mr. Fowler said the Board has to go with the ordinance that is in effect. Mrs. Thomas said the sketch map supplied by Mrs. Lawser is pretty good, and with some additional measurements, it would be easy to do the math and get the non-conformance numbers. She said if they application shows a less than 30% expansion, it might not be a big deal. ***Mrs. Thomas moved to sustain the Notice of Violation but recommend the corrective action be reconsidered. Mr. Jones 2nd.***

Mr. VanAmringe says the motion would mean that the appellant should have a permit, and it's time to get out the tape measure. He said if there had been a permit issued, the Board might just have said it looks nice. He asked if the Board is upholding the denial of Mrs. Lawser's appeal. Mrs. Thomas said that was correct, this was to deny the appeal, upholding the need for a permit, but asking the Code Enforcement Officer to reconsider the remedy stated in the Notice of Violation.

After a brief discussion, the **Vote in favor of the motion was 4-0 (Fowler abstained).**

Other – Next Meeting(s) (Moldawer v. Code Enforcement Officer 2) – Mr. VanAmringe said he received a letter from Jonathan Pottle that requested that the Board promptly schedule a meeting. He said that Mr. Collier had suggested an administrative meeting to stipulate that which was already agreed to. He said Mr. Moldawer has indicated that he is not available between September 1 and 21.

Mr. VanAmringe said the information from the parties of interest needs to be in the hands of the Board of Appeals 7 to 10 days before the meeting. He said the schedule may have to coincide with the schedule for the school gym. He said any meeting on this matter will have to comply with all safety precautions. He said there would have to be adequate Wi-Fi available at the school if the meeting takes place there. He suggested that the administrative stipulation meeting could be done by phone.

Mr. Jones said the request was to set a date as soon as possible. Mr. VanAmringe said he could ask the town attorney what the Board is allowed to do. Mr. Jones said this is not a re-trial of the first case. Mr. VanAmringe said no, he was erring on the side of to consider just once more, and it should be very brief, and if the parties involved can't agree, it can go to court. He said the Board needs to see the information in advance, and decide how to conduct that meeting. Mrs. Thomas said perhaps the meeting presentations could be truncated. Mr. VanAmringe said he would like to limit the amount of time on the presentations in a similar manner as an appeals court would. He said it should be short oral presentations. Mr. Fowler said it's time that the parties spent their own money instead of everyone else's. A lengthy discussion followed on what venue to use.

Secretary pro-tem Stu Marckoon asked what the response should be to Mr. Pottle's request. Mr. VanAmringe said he has already communicated to Mr. Pottle that a meeting cannot be scheduled until such time as the stipulation meeting is done. He said the Board will pick a safe location, and input will only be taken from the parties of interest. He said he would be very upset if anyone was put at risk. Chairman Fenton said the date(s) could be set by e-mail.

There being no further business, the meeting adjourned at 8:00 PM.

Respectfully submitted,

Stu Marckoon, Secretary pro-tem