



Lamoine Board of Appeals

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Draft

Minutes – January 19, 2021

Chair Hancock “Griff” Fenton called the meeting to order at 6:34 PM at the Lamoine Town Hall and via Zoom Meetings.

Present at the town hall were: Appeals Board members Jay Fowler, Griff Fenton, Brett Jones, Appellant Jeannine Lawser; Administrative Assistant to the Selectmen Stu Marckoon. Present via Zoom Meetings were Appeals Board members Larissa Thomas, Jon VanAmringe and Code Enforcement Officer Rebecca Albright.

Minutes – October 27, 2020 – Mrs. Thomas moved to approve the minutes. Mr. Jones 2nd. **Vote in favor was 5-0.**

Lawser v. Code Enforcement Officer – The Board acted on the following preliminary motions:

To find that the Board of Appeals has jurisdiction in this matter (Jones/Fowler) **Vote in favor 5-0.**

To find that the applicant has standing (Jones/Thomas) **Vote in favor 5-0.**

To find that the appeal was filed in the time allowed by ordinance (Jones/Fowler) **Vote in favor was 5-0.**

To find that no members of the Board of Appeals have a conflict of interest (Jones/Thomas). It was noted that Mr. Jones will be on the deciding panel as board member Michael Jordan is absent and the appellant is his sister. **Vote in favor was 5-0.**

To find that a quorum exists (Jones/Thomas) **Vote in favor was 5-0.**

Presentation from Appellant – Chairman Fenton said the Board has heard the matter once before, but in a different vein, referring to a previous meeting where the Board ruled that the appellant required a permit to erect the structure in question.

Mrs. Lawser said after the previous meeting with the Board of Appeals that she submitted the information requested to CEO Albright. She said that consisted of a few more measurements on the deck that replaced the front steps and patio bricks in front of her home. She said the application with the information was submitted to Stu Marckoon at the town office a few days later. She said she got a letter from CEO Albright that had nothing to do with the measurements, but instead referred to the septic system possibly being under the deck.

Mrs. Lawser said she found the replacement system application for the property and submitted that to CEO Albright. She said her brother helped to stake out where the septic system was located based on the design and utilizing the utility pole referred to in the design.

Mrs. Lawser said she then got an e-mail message from CEO Albright which she read to the Board. She said the e-mail asked for setback measurements. She said she replied to CEO Albright that her brother Michael would assist CEO Albright with those measurements. She said that when CEO Albright arrived that she was only there about 5-minutes and did not look at the location of the septic system. She said she then received a letter from CEO Albright saying that she could not grant the permit because of non-compliance.

Mrs. Lawser said the project is less than a 30% expansion of her non-conforming structure, so she doesn't understand why the permit was denied. She said she asked CEO Albright via e-mail to reconsider the denial. She said this has been going on since May 2020, and the deck is only 68-square feet larger than the previous steps and patio area. Mrs. Lawser said the letter from CEO Albright said that the CEO did not have the authority to issue a permit that makes a non-conforming structure more non-conforming. She said she can't put the deck anywhere else, and the house is grandfathered. She said the 30% non-conforming expansion rule would apply to her, so she is appealing the decision of the Code Enforcement Officer to deny the building permit. She said she showed on the application that the new deck was further away from the road because of the curve of the road.

Chairman Fenton said that Mrs. Lawser had mentioned his name twice in an e-mail exchange with CEO Albright. He said that when he had talked with Mrs. Lawser he was merely suggesting that perhaps there was a way to come up with a conforming project. He said that CEO Albright has a job that she has to do.

Mrs. Lawser said she feels that the town is discriminating against her because her brother is a member of the Board of Appeals. She said some people in the community remarked to her that if she lived on a different road, the matter might never have been brought up.

Code Enforcement Officer Presentation – CEO Rebecca Albright said a concern about the Lawser leach field was brought to her following the previous meeting. She said it was her job to check that the deck was not built on the leach field, and Mrs. Lawser did provide information on where the system was located and it was not under the deck. She said she was just doing her job.

CEO Albright said she needed to get the setback measurement from the center of Douglas Highway, and it was a quick measurement to take. She said it was not her intention to rush or pressure Mrs. Lawser. She said she measured the setback twice and found the new deck was 57-feet from the center of the road, and that's the problem. She said the Building and Land Use Ordinance requires structures to be set back 75-feet, and a non-conforming structure cannot be built to be closer to the road, as that would make it more non-conforming which is not allowed.

Discussion – Mrs. Thomas said she looked through the Building and Land Use Ordinance and could not see where it was disallowable to make a structure more non-conforming, and asked where this rule is stated to gain clarity on how the concept is

framed. CEO Albright said that's state law. Chairman Fenton said he agreed it was state law and cited an example of a Board case involving a home in Marlboro.

Mr. Jones said he wanted to clarify the non-conformance issue. Chairman Fenton explained it in terms of the Marlboro house case. CEO Albright read a ruling in regard to non-conformance and said a non-conforming situation cannot be made more non-conforming unless allowed by ordinance. A brief discussion followed.

Mrs. Thomas asked what constituted "more non-conforming". CEO Albright said the residence was built prior to enactment of the Building and Land Use Ordinance (BLUO). She said the house was 62-feet from the center of the road, and is legally non-conforming. She said the BLUO requires a 75-foot setback. She said if she allowed a setback of 57-feet that would be more non-conforming. Chairman Fenton said if an addition were put on the existing building but was set back 71-feet, that would be less non-conforming. CEO Albright said Mrs. Lawser could replace the front steps exactly as they were before. She noted that she did not request or receive a permit for the new deck. She said the patio bricks placed on the ground prior to the new deck did not count as a structure and the ordinance does not allow for those bricks to be converted into a structure.

Chairman Fenton asked what the distance from the center of the road was to the original entry area compared to now. CEO Albright said she did not see the original steps, but would estimate the steps extended about 5-feet from the residence toward the road. Chairman Fenton asked where the original landing was. Mrs. Lawser said it was in the exact same footprint as now, but she added 68-square feet more to make it look nicer. Chairman Fenton asked if the repairs to the house and the fill covering it went closer to the road. Mrs. Thomas said the drawing on the application shows what was added.

Mr. Jones asked if the original structure was the same distance as the new structure. A brief discussion followed about the photographs, the scope of the BLUO and the definition of a structure.

Mr. VanAmringe said prior to the new construction there was a platform at the front door with steps. He said the question revolves around the homeowner deciding to make a structure 68 square feet larger than the prior area that existed. He said if the platform had just been replaced with the same dimensions, this would not be an issue. CEO Albright said that would not require a permit. Mr. VanAmringe asked if the 68-square feet makes a different structure and gave an example of a non-conforming building issue in Sullivan that he was familiar with.

CEO Albright said all the new construction was done prior to any consultation with the CEO. Mr. VanAmringe said the usual practice is for a homeowner to consult with the CEO to ask if they need a permit, and the homeowner in this case independently decided they did not need one. He said the Appeals Board went through that before. He said the new structure appears to be closer to the road than before. He asked if the Board wants to issue a variance that violates the ordinance. He said this is not personal.

Chairman Fenton said the non-conformance is because there was a structure there before and the new structure cannot be closer to the road. Mr. VanAmringe said the new structure is bigger. Mrs. Thomas said the deck is different than the previous patio with pavers. CEO Albright said that is correct. She said the deck in the place of the patio pavers is illegally non-conforming, as the deck is closer to the road. Mr. Jones read the definition of a structure in section 51 (non-conforming) from the BLUO. He said a 30% expansion would be allowed on that portion of the building that is non-conforming.

Chairman Fenton said asked what would prevent him from placing a small, non-attached building of less than 100-square feet in front of the house. CEO Albright said the setback requirement.

Mr. Jones asked if there is an issue with the setback of the leach bed from the residence. Mr. Fowler said the field received a variance down to 12-feet from the basement. He said if an 8-foot deck was added, then there is now only a 4-foot setback. He said the normal leach field setback is 20-feet. A discussion followed on required septic system setbacks.

Mrs. Lawser said she did not think that replacing the paving stone patio with steps and a deck was creating a new structure. She said called the town office prior to the project, and did not understand the definitions of steps vs. a structure. Mr. Fowler referred to the Young case decided previously by the Board and said the Board was not picking on Mrs. Lawser.

Mr. Jones said the deck is a structure and requires a setback from a leach bed. Mr. Fowler said the septic tank is located in front of the residence and the leach field is to the south. Chairman Fenton said the patio pavers were not a structure – the only structure besides the residence was the steps/platform. He said if the appeal is denied the only thing that could be placed there is the same steps/platform configuration. CEO Albright said Mrs. Lawser could have exactly what was there prior to the new construction. A brief discussion followed.

Mrs. Thomas asked if something is too close to the septic system, would it impair the ability of the system to function. CEO Albright said a septic system needs to “breathe”. A brief discussion followed. Mr. Fowler said it’s better to have aeration over the top of a leach bed.

Mr. Jones asked if the deck were wider, would that make it more non-conforming. Chairman Fenton said he believed the more non-conforming issue would come into play based on setbacks. A very lengthy discussion followed on the possible configurations that a deck could take and not be more non-conforming.

Mr. Jones said there appears to be two setback issues – one from the septic system and one from the road. Mr. Fowler said the house is already non-conforming. Further discussion followed on what kind of alterations could be made to bring the new deck into compliance.

Mr. Marckoon reminded the Board that the issue before them is whether the CEO properly or improperly denied a permit, and that function of the board is not necessarily to solve the property owner's problem. Chairman Fenton said he disagreed. He said the Board should try to help its residents.

Chairman Fenton said that in previous discussion, Mrs. Lawser had mentioned that her mother had trouble accessing her home and asked about handicapped access. CEO Albright said the Federal ADA law is another set of issues. Chairman Fenton asked if this is an issue. Mr. Marckoon told the board that in the past they have issued variances so that the ADA could be followed.

Mr. Jones said it appears the new structure is closer to the road than the previous steps. He said it appears the CEO made the right decision, but he's frustrated by the process.

Mrs. Thomas asked what the penalty might be. Mr. Jones said that would be up to the Board of Selectmen. He asked if the CEO was notified about the accessibility issue. Mrs. Lawser said there was no such conversation. Chairman Fenton asked about the accessibility project at the Grange Hall. A brief discussion followed on the ADA.

Mrs. Thomas moved to uphold the Code Enforcement Officer's permit denial. Mr. Fowler 2nd.

Mr. Jones said the action to deny was correct. He said he would like to see a solution that comports with the ordinance. A discussion followed on what type of technical assistance should come from the town. Mrs. Thomas said she would advocate that the CEO work with Mrs. Lawser to find a solution. Mr. VanAmringe said it would be inappropriate for the town to determine what the solution should be, but the Board has offered up some alternatives. He said it's the property owner's responsibility to come up with the solution. He said he would like to see the ad hominem issues cease and just find a solution that complies with the setback and subsurface septic issues. He said this is the first time he's heard an issue with the ADA. Chairman Fenton said he believes it is the board's charge to educate and assist homeowners. He said CEO Albright is doing her job, but there is a duty to help citizens navigate through the ordinances. A brief discussion followed regarding the level of assistance expected with making sure projects meet the local ordinance requirements.

Vote in favor was 5-0.

Following the vote Mr. Jones asked if ADA variances only apply to public buildings, or can they apply to private residences as well. CEO Albright said she would look into that.

Mrs. Lawser said it's winter time and asked if she still had 30-days to come into compliance with the CEO's violation notice, or if that could be extended. She said she was leaving town to assist her son who is moving. CEO Albright asked when she would return. Mrs. Lawser said in about 10-days. CEO Albright said she believed that would be allowed and asked if Mr. Marckoon concurred. He replied that the next step would be for Mrs. Lawser to submit a design that complies with the non-conforming structure and sub surface wastewater disposal setback requirements, and that town could be flexible

to give her a reasonable amount of time to do so. He said that the deck as it currently sits will not be allowed to remain where it is, but there's possible a design that could fit the ordinance.

Other Matters – Mr. Jones asked when the Board might start tackling the Appeals Board Ordinance that has been in draft mode for years. Chairman Fenton said the pandemic restrictions should be lifted, and he would like to bring the Planning Board in on the discussion.

Next Meeting – Chairman Fenton said the next date is to be determined.

There being no further business, the meeting adjourned at 8:33 PM.

Respectfully submitted,

Stu Marckoon, Secretary pro-tem.