

would not be usable if the deck was removed. It would also have a significant change in its appearance if the deck was taken away. The value of his property would be significantly reduced without the use of the deck and the sliders on the 2nd floor. The addition was done in 1985 and he would also be out of the money put forth on this project.

Responding to question (2), Mr. Regan told the Board that originally he had a single story cottage when in 1985 he added the 2nd floor to enhance the property. This was done before there was any zoning ordinance (to his knowledge).

Continuing with his responses, Mr. Regan answered question (3) by stating that the deck has been in place for over (25) years without a problem and is in character with the rest of the neighborhood.

Proceeding to question (4) under “undue hardship”, Mr. Regan pointed out that the work was done by a general contractor, Richard Bronder, and he personally felt that the contractor would have obtained all necessary permits for the project. He also felt the Town copies were inaccurate. He further stated that the Code Enforcement Officer at the time, Brian Howard, inspected the property during the construction and after completion of the work in 1985. In the past, Mr. Regan said he had obtained other permits from the Town and no one has ever raised an issue with his deck. In 2003 he filed an application for a septic and in 2007 he filed an application for a chimney. The deck has also appeared on the tax assessor’s document. In 2003 he received a permit from D.E.P. for shoreline work with no issue regarding his deck from the inspector.

In conclusion, Mr. Regan emphasized that he firmly believed Mr. Bronder would have gathered all of the necessary permits before doing the project. Personally, he also felt that he took all of the necessary steps in 1985 to avoid any and all problems. Unfortunately, Mr. Bronder passed away and his son is unable to locate any of his dad’s documents to produce as evidence.

Paul asked the CEO if there was a sketch or something that the Board could view regarding the property on Tall Pines Road. Shirley responded by nodding “yes”.

Next, Paul asked the appellant if there was anything else he would like to add. Mr. Regan said “no”.

With no further comment from the appellant, Paul turned the floor over to the Code Officer, Shirley Sheesley, for any rebuttal.

Shirley spoke to the assessing department who confirmed the error with regard to Mr. Regan’s property. It was off by (1) lot, as pointed out by Shirley on the slide projector.

Paul asked the applicant if he owned the adjacent property. Mr. Regan replied “no”. His lot is #7, as depicted on Shirley’s projector.

Shirley agreed that the appellant must meet the (4) criteria questions as outlined in the Dimensional Variance under “undue hardship” since the property is in the shoreland zone.

Shirley presented some aerial photographs of Mr. Regan’s property for the Board to view.

The Board viewed the pictures showing the deck built after-the-fact without a permit. She further stated that the cottage was approximately 65’ to 70’ from the shoreland.

Paul confirmed with Shirley that the measurements from the shore to the “face” of the home did fall within the 75 foot shoreland restriction. Hence, this places the deck facing the lake within the 75 foot setback requirement.

Shirley made reference to the newer deck and the age of the wood commenting to the Board that the applicant was not disputing the new deck and why an “after-the-fact” application was done.

The applicant for the most part agreed with the Code Officers presentation. He did speak to the steps leading to the 2nd floor stating he had them repaired because they were pulling away from the home. He assumed this to be a repair and not requiring a permit.

Next, Shirley ran through the (4) criteria questions and why she feels the appeal should be denied. In addition, the Town kept a permit book listing all permits issued between 1983 and 1986. There were no permits listed for 122 Tall Pines Road within the time frame indicated, at least according to records maintained by the Town. Only (1) permit was found that had been issued to Mr. Bronder during the 1983 to 1986 time frame. In fairness to the applicant, Shirley said he may have thought the contractor pulled a permit but the records did not show evidence of that.

Paul asked what years the books actually covered.

Shirley responded saying the permit books actually covered the years from 1980 to 1988.

Shirley also stated there has been a shoreland zoning ordinance since 1974, before the owner purchased the property. She offered the old zoning ordinances to the Board for viewing.

Paul asked the owner if he had purchased the property with a building already on it. The applicant responded with a “yes”.

Paul asked Shirley if she had any records as to when the building was actually built. Shirley responded saying “yes”. She made reference to the building being raised in 1985 placing it on a new foundation. The applicant confirmed the work and said that when the inspector checked the depth of the foundation (4 feet), he was surprised and said he only had to go down (2 feet) due to the water table.

Paul asked Shirley if she had the 1974 version of shoreland zoning. Also, he asked what the setback requirements were when the work was done. Shirley confirmed that the setback for shoreland zoning was at that time, 75 feet. She confirmed with the Board that there was a permit issued for the raising of the house. That was not an issue with Codes. It was the deck additions that had no permit authorizing the work. Again, she said that Mr. Bronder may have forgotten to get them before doing the work in 1985.

Shirley asked the Board if they had any questions they would like to ask of her.

Jim Wendel, Board member, said to Shirley that a copy of the 1985 building application made no mention of a deck. It did reference a 24' x 28' cottage, foundation, frost wall and footing.

Paul asked Jim what the plan was showing for setbacks. Jim responded saying it was showing (77) feet (4) inches from the lake to the face of the cottage on the 1985 plans.

Shirley reiterated to the Board that in order for work to be considered a repair, it must be less than 50 percent of the entire thing. If more than 50 percent needs to be repaired, it is considered new construction and requires a permit.

Next, Paul recapped the last conversion addressing Mr. Regan's moral support and asked if he would identify himself. He replied that he was Red Charlmers, brother-in-law to Philip Regan and also a Code Officer for Alfred, Maine.

Mr. Charlmers confirmed that both decks were there in 1987 because he and his wife stayed with the Regans while they were building a place across the lake.

Paul asked Mr. Charlmers if the decks were in the same configuration as they are today. Mr. Charlmers said to the best of his memory, they were.

Next, Paul asked if the elevation of the lake had changed between then and now. The owner answered Paul by saying that in years past the water level was much lower and he had a beach. Today he has no beach and the water level is much higher.

Paul asked the owner if he had a date when the original structure was built. Mr. Regan wasn't sure. Shirley said the assessor has it down as AYB – 1970.

Paul asked the owner if the 1985 plans went through the Planning Board. Mr. Regan said "no" and that he had only dealt with Codes.

He next asked the owner if it was the same deck that was built in 1985. Mr. Regan said "yes" and other than banging in a few nails in now and then nothing had changed.

Paul asked Shirley if there were any other issues on the property or potential violations. Shirley said as far as she knew, there were no other potential violations.

Paul asked the appellant if he had a brother in the neighborhood. Mr. Regan acknowledged he had a brother just up the street from his home.

Paul asked Shirley if she had reviewed his brother's file in case there was a permit or other documents placed in the wrong file. Shirley confirmed and Mr. Regan agreed they both had reviewed his brother's file for that purpose.

Jim Wendel asked Paul what the D.E.P. ruling is on setback requirements when there is an evident change in the water level.

Paul questioned the side deck and if it was compliant with the 75 ft setback. The side deck allows access to the front deck as depicted from a previous picture.

When asked if it was a seasonal or a year round home, the owner said it was seasonal but he plans on making it a year round home. He's trying to sell his property in Massachusetts and permanently move into his home on Tall Pines Road.

Paul further inquired about the renovations to the home, in particular, the sliding glass door to the deck. Was that there when you purchased your home? The owner acknowledged that the sliders were installed following the construction in 1985.

The Chairperson asked if there were any questions from the Board. Having no response from the Board he asked if there were any person(s) wishing to speak in favor or in opposition to the appeal. No one responded.

Next, the meeting was closed to the public for Board deliberation.

There was more discussion on the setbacks and how/when they came about among the Board members. While the Board was out for discussion, Paul asked Shirley if she could access an old tax card from the property.

Jim addressed the building permit to raise the home and place it on a new foundation. He was puzzled by the fact there was no notation as to a deck, either on the front of the application or the back of it. Nothing, not even a sketch of one.

Paul turned to the appellant commenting on the sliding glass door on the first floor and if there was another entry into the home.

The appellant stated he had a side entry door, just a door, no slider. On the lake side of the property he has a sliding glass door on the 1st floor and another on the 2nd floor.

Paul asked the appellant if there were other major renovations done at the time they raised the home. The applicant answered "yes".

Paul asked Jim if there was a dollar amount on the permit application. Jim responded with the amount of \$7,000 noting the year 1985.

Jim Wendel itemized the work involved for the cost in 1985. A foundation with frost walls and lowering a 24' x 28' structure onto the new foundation.

The Board also noted the permit was pulled by Mr. Paul Williams and not by Richard Bronder. Paul Williams is a known contractor working in foundations and worked closely with Bronder and other building contractors.

The Chairperson asked the appellant if he had any old photographs of the cottage before it was elevated.

The applicant said he did not but maybe some in the family might have pictures of it.

Jim asked the Chairperson if they had a copy of the C of O (Certificate of Occupancy). No certificate of occupancy was noted.

Paul suggested they view the appeal in two separate parts. The first part for the side deck and the second phase for the deck facing the water.

Paul confirmed with the appellant that there were limited entry doors to the home. The side door or the elevated deck on the 2nd floor.

Paul questioned the appeal and if it was for the deck facing the water or was it for both decks including the side deck?

The Board in discussion felt that the side deck would have been in compliance at the time of construction, based on the initial 77.4' setback from the water. The variance then would be limited to the deck on the lake side of the property.

Next, the Board took vote on the (4) criteria questions. A copy of the "Findings of Fact" is included with the minutes and was mailed to the appellant on April 11, 2011. You may review the results on the Town's website following the approval of the minutes. A copy is also maintained for public viewing in the Codes office. The Board voted to deny the dimensional variance.

This is part 1 of a 2 part document

This is part 2 of 2 part document

At 8:42 P.M., Mark Patterson joined the other members of the Zoning Board of Appeals to participate in the second hearing and immediately called the Board to order.

As Chairperson of the ZBA, Mark announced the continuation of the appeal of Justine Farley, 51 Oak Hill Road, Sanford, Maine 04073. Justine Farley is requesting an Administrative Appeal of a Code Enforcement Violation Notice on her property, Tax Map R21, Lots 5 & 6. Property is located in the RR Zone and the Shoreland Zone.

Mark briefly recapped the initial meeting on March 28, 2011 of the site walk which took place on Friday, April 8, 2011 and the continuation of her appeal to Monday, April 11, 2011. With the exception of Board member Kimberly Stewart, all other members present this evening were also present for the site walk on Friday, April 8, 2011.

Mark asked the appellant if she was appealing the letter of February 17, 2011 from Code Enforcement itemizing the (5) points listed in the letter (outlined below).

1. Apparent roof change from hip roof to gable roof on street side of house. No permit in file.
2. Apparent deck addition on lake side of house. No permit in file.
3. Deck replacement on street side of house. No permit in file.
4. We are concerned with the safety of the stairs to the second floor and with the location of bedrooms on the second floor. Assessing records show the second floor to be an unfinished attic. No permit in file for finishing the second floor.
5. It appears that there are (4) bedrooms in this home. The septic is designed for up to (3) bedrooms and with minimal theoretical design flow.

Shirley interjected to ask the Chairperson if he was reopening the hearing to the public. Mark responded with a “yes”.

Mark opened the meeting to the public and immediately addressed the conflict of interest with the Board members. With no conflict of interest issue, Mark called for the Code Enforcement Officer to give a presentation on where things were following the last meeting.

Shirley noted that it was not her turn to speak and referred the meeting back to the Chairperson.

Mark turned the hearing over to the appellant, Justine Farley.

Justine Farley responded to the letter from the Codes Enforcement Officer, Shirley Sheesley. A recap of her presentation given on March 28, 2011, prior to the site walk on Friday, April 9, 2011, was addressed to the Zoning Board of Appeals.

Following the appellant's recap Mark asked the Board if there were any questions for Justine Farley. Seeing none, Mark turned the hearing over to the Code Officer for rebuttal.

Shirley commenced by stating she had additional material for the Board to review following the site walk. Also, she questioned Kimberly Stewart sitting as an active member with regard to this particular hearing as she was absent from the site walk and also from the hearing on March 28, 2011.

The Board took the next few minutes to discuss if Kimberly should recuse herself from participating.

After hearing argument for and against, Kimberly recused herself from partaking in the vote and the Board continued the hearing with the remaining four (4) members.

Continuing with the hearing, Shirley presented the Board with more material including photographs taken at the site and copies of Tax Sheets dating back to 1972. Shirley noted the two major issues regarding this property. The first issue: property is clearly in the shoreland zoning and the cottage itself falls within the 75 ft setback from the water. The second issue pertained to work done without a permit.

Shirley pointed out the apparent roof change from a hip roof on street side to a gable roof.

Mark noticed during the site walk the wood on the roof looked all within the same age group. Mark explained that it is virtually impossible to do shingle weaving from hip to a gable roof.

Shirley continued with the most recent tax card showing the two decks but if you look at the tax card for 1972 and 1987, the decks are not shown.

Mark asked Shirley about the porch and was it on the tax card for 1972 and 1987. Shirley answered "yes" and it showed as an opened finished porch.

Trying to determine the accuracy of tax cards from the 70's, Mark asked Shirley as to how accurate has she found them to be. Her response to the Chairperson was she could only go by what was on the card and presented from the assessor's office.

Mark asked about the meaning of "FOP" on the tax card and did it have the same meaning as "OFP". Shirley gave the definition for "FOP" as "finished open porch". She could not find a description for OFP, although it was on the 1972 tax card.

To summarize, Shirley said there were two (2) decks listed for this property which had been replaced, all without a permits. She also expressed her concern regarding the safety of the stairs and wanted it on record that she feels they are a safety hazard. The bedroom in the basement with no egress window and exposed wiring was also another concern she noted during the site walk. Although they were not part of the appeal, Shirley wanted to bring it to the attention of the owner as they are serious safety issues and she didn't want anyone to get hurt.

Mark asked about item #4 and if there was any action required. Shirley did address the assessor's record showing the attic as unfinished but discovered it had been finished and, again, no permit issued from the Codes Department authorizing the work.

Shirley's not concerned about item #5 as the septic system is now on the opposite side of the road, further away from the lake, and is designed to adequately handle a (3) bedroom home.

Discussion took place among the Board members and the CEO regarding the tax cards and the number of bedrooms.

A couple of discrepancies were noted with the attic. The 1987 tax card is showing the attic as finished and the more current tax card shows it as unfinished.

The discussion over the amount of bedrooms filtered from the Board to the appellant. Mark noted to the appellant that going from a finished area to another finished area through an unfinished area is dangerous and the banks would not approve this.(in reference to her appraiser).

The Board decided not to address the patio which was only evident following the melting of the snow. This will be addressed at another time.

Mark asked the CEO if she knew when "pressure treated" wood was available for building purposes. Mark felt comfortable stating it wasn't available in the 60's. Jamie spoke to Mark regarding his knowledge of "pressure treated wood". Mark added that in 1985 it was readily available and most were using it. Jamie thought it was available in the 70's. Mark noted that much of the work was done using "pressure treated wood".

The Board deliberated on the (5) points voting on each as they made their motion. A copy of the "Findings of Fact" is included with the minutes and was mailed to the appellant on April 11, 2011. You may view the results on the Town's website following the approval of the minutes. A copy is also maintained for public viewing in the Codes office.