

**Town of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals held a meeting on Monday, February 28, 2011 at the Sanford Town Hall. The meeting was called to order at 7:02 P.M. by the Acting Chairperson, Paul Demers.

Members Present: **Paul A. Demers**
 Kimberly Stewart
 Kyle Landry
 Naila Aslam-Khan
 Jane Bowker

Members Absent: Mark I. Patterson
 James T. Wendel

Representing Code Enforcement: Shirley S. Sheesley, Chief Code Enforcement Officer
 Jamie Cole, Code Enforcement Officer

Paul Demers, Acting Chairperson for the ZBA commenced with the Pledge of Allegiance.

In the absence of Mark Patterson, Chairperson for ZBA, Paul opened the meeting by making a motion to approve the minutes from January 10, 2011. Kyle motioned to approve the minutes. Naila seconded the motion and the Board voted 4-0 in favor to approve the minutes of January 10, 2011. The vote was changed to reflect 3-0 as Naila was not present for the meeting on January 10, 2010.

With the arrival of the last Board member, Paul immediately addressed the New Business and the appeal of Ernest Levesque of 17 Yvonne Street, Sanford, Maine who is requesting a Dimensional Variance Appeal in order to add an addition to his garage, Map L33, Lot 24. His property is located in the Single Family Residential Zone (SFR).

Paul next questioned the Board regarding conflict of interest with respect to the applicant. A negative response from the Board prompted the Vice Chairperson to address the applicant on the Board's procedure in how they determine if the appeal warrants approval.

Jane Bowker, Board Secretary, interjected explaining to the Acting Chairperson that there were also other determinations necessary before turning the attention to the applicant. She referenced the part where the Code Enforcement Officer (CEO) gave a brief statement as to the action that gave rise to the appeal and the basis for it, followed by Determination of Standing.

Acknowledging the Board Secretary, Paul asked the CEO to give a brief description as to the cause for this appeal.

Shirley Sheesley explained to the Board that the appellant's application for a building permit was denied on the basis the garage addition did not meet the minimum side setback in the SFR zone. The ordinance requires a minimum setback of 10 feet and the application showed only 8 feet from the side lot line. The CEO also confirmed to the Board that the applicant is also the owner of the property located at 17 Yvonne Street.

Next, Paul turned the floor over to the appellant.

Mrs. Levesque spoke to the Board regarding their current arrangement and why it was necessary to expand the garage in order to accommodate their two large vehicles. Without expanding, they would have to tear down the existing breezeway in order to make additional room. Besides, the cost would be double that of going forth on expanding the garage toward the lot line.

Paul Demers confirmed with the appellant that they currently have a 12' wide garage and they wanted to expand the garage by another 12' in order to accommodate both vehicles.

Paul asked if there were any other Board members wishing to speak.

Following a negative response from the Board, Paul next asked the CEO to advise the Board as to where they were in the process.

Shirley informed the Board that in the case of a Dimensional Variance Appeal it would require, under Practical Difficulty, meeting all (8) points in order to grant the variance. She reminded the Board, pursuant to Section 280-42 of the Town Code, the minimum side setback in the SFR zone is 10 feet and the applicant is requesting an appeal for the 2 feet.

The CEO ran through all (8) points listing her comments and why she felt the applicant failed to meet all of the (8) points and why the variance should be denied.

The Vice Chairperson of ZBA asked if the Board had any questions to present to the Code Enforcement Officer.

Jane Bowker confirmed with Shirley the findings in the appellant's application and why the application was denied.

Paul asked the applicant if the plan submitted to codes with the initial application was from the result of the mortgage investment survey.

Applicant's microphone was not on and audio was not clear.

Mrs. Levesque stated that there were no visible markings to show exactly where their property began.

Paul expressed his difficulty in granting a variance appeal if the applicant failed to attain all vital information such as knowing exactly where their lot lines were. He made an example by stating that they may have the necessary footage but without proof, it is hard to determine the exact boundary. The applicant felt that the code officer was probably correct based on the location of their home.

The applicant questioned the Acting Chairperson that if they were to pay the expense to have their property surveyed BUT they failed to pass all of the eight (8) criteria questions, they would not only be out the money for the surveyor but they would also lose the appeal. Paul responded by stating that a survey would clear any doubt if there was sufficient footage to go forth on their original plans. Paul further stated that if the Board had more information they could do a better job in evaluating the merits for possibly granting the variance.

Mr. Levesque spoke to Paul and stated he was aware of a marker, on the opposite side of the house and that he could not find another marker to help him in determining the exact boundary of his property. He's aware that he has 90 feet for frontage but when Paul asked him if he had a copy of his deed with him. Mr. Levesque indicated he did not.

Paul asked Mr. Levesque if he could go through the (8) criteria questions giving the Board his comments so the Board would have the means in which they could vote.

Mrs. Levesque went through the (8) criteria questions giving her opinion as to why the Board should grant the variance appeal.

Following the applicant's presentation, Paul asked the Board if anyone had a question or comment for Mrs. Levesque. With no direct comments or questions from the Board, Paul explained to the appellant that since this was a public hearing any concerned abutters or anyone present that could address the Board. With no response from the audience Paul suggested the Board review each of the items presented by the applicant. Before closing the hearing to the public, Paul asked the appellant if they had considered building a 22 ft. garage instead of the 24 ft garage with a 16 foot door or two 9 foot doors.

Mrs. Levesque responded by saying they had considered a smaller garage but after measuring their vehicles allowing for opening their doors they both agreed it was too close.

At 7:32 P.M., Paul closed the meeting to the public in order to deliberate the (8) questions. A copy of the "Findings of Fact" are included with the minutes and was mailed to the appellant on February 28, 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. The Board voted to deny the dimensional variance.

Following the above appeal, a question was asked by the Board as to why there was a part (a) and a part (b) to the fourth question. Shirley explained to the Board the reason(s) why it needed both parts in order to pass.

The next appeal was immediately addressed by the Acting Chairperson. Paul announced the appeal of Tom and Barbara White, 144 Stanley Road, Springvale, Maine 04083. The Whites' are requesting a Dimensional, Use, and, Disability Variance for their property listed above, Map R3, Lot 3 in the Rural Residential Zone (RR).

Paul next asked the Board regarding conflict of interest with respect to the applicant. With no response from the Board members, Paul addressed the applicant asking if he was the rightful owner of the property.

The applicant, Stanley White and son of Tom & Barbara White, responded indicating he was authorized (letter) to represent his parents. Shirley had a copy of the authorization and submitted it to the Board for confirmation.

Paul asked Shirley, CEO, to give a brief description as to the cause for the appeal.

Shirley responded by stating the basis for the appeal. No permit was issued from the Codes office for a shed located 12 feet from the street and approximately 3' from the property line. She further pointed out that the property is located in the (RR) zone and required a 40 foot front setback. She also pointed out to the Board that the application for the appeal focused on a Dimensional, a Use and a Disability Variance and was uncertain as to how the Board would approach all three.

The applicant spoke to the Board indicating he would go for the Disability Variance for an after-the-fact shed.

Paul stated to the applicant that a Disability Variance must be accompanied by evidence of a disability. A granted Disability Variance could also come with limitations and gave an example, i.e.. if the variance was granted for the shed and the current owner(s) decided to move, the shed would also need to be removed.

The applicant stated that the shed was needed to house a snow blower for winter use and seeing his parents were older found it difficult not having the snow blower closer toward the road. The son pointed out that 50% of the time he is available to help them but when he is not available they need whatever assistance possible.

Paul asked the applicant if his parents were capable of snow blowing their property. The applicant responded saying "some days they are and some days they are not". They are physically not able to shovel the snow and he has gone back to their house to finish clearing the walkway. Moving the shed to another location is not an option as it would require much shoveling in order to get to the snow blower, something his parents are not capable of doing.

Jane Bowker proposed to the Chairperson that they review/consider a variance request based on their health. Paul agreed and reopened the meeting based on a Disability Variance for the purpose of allowing a 10' x 10' shed for the means of storing lawn and garden equipment in its current location.

Paul asked if there was a special section for a Disability Variance or was the Board to follow an Undue Hardship or Practical Difficulty format.

The Chairperson also referenced a letter from Internal Medicine of the MMC Outpatient Department in Portland, presented by Geeta Godara, M.D., regarding Barbara White and her physical condition. The doctor is asking that the Board allow Mrs. White to have her shed where it is now located.

Shirley indicated to Paul that there was not a form for a Disability Variance and she presented, in lieu of a form, a Finding of Fact for going forth on a Disability Variance.

Paul opened the meeting at this time to the Board members. The Board requested if it was possible to see the current location of the shed, perhaps a drawing or picture from the applicant.

Stanley White presented a drawing that showed the current location of the shed and its proximity to the road and their home. He also pointed out there was no feasible alternative to place the shed in order to meet the Code Officer's suggestion.

Paul asked the applicant to explain the current status of his parents since the appeal is based on a Disability.

(Note, the mike on the applicant's table was not working properly and his response is totally inaudible).

The next audible portion was from the Chairperson who acknowledged the physical limitations of his parents as presented by Stanley White.

Again, comments made by the appellant were inaudible.

Paul next referred to Shirley, Sanford CEO, for any comments regarding the applicant's response.

Shirley announced to the Board that she had additional information received from our Attorney regarding a State Law as to a Disability Variance which might help them in making a decision.

Paul asked Jamie to relocate the applicant's microphone hoping that it might eliminate some of the distortion experienced by other members.

The State Law does provide some relief as it relates to the (4) point test. A copy of each was handed to the Board by the CEO. Whereby the State allows access to your home, it

was not clear if the shed falls under the same means. Shirley asked the Board if they would like to see what the property looks like from the Town's GIS Map. The Board acknowledged favorably.

Shirley explained the demographics of the lot where the house is located and their property across the street where their cars are being parked. She did agree with the applicant that to locate a shed on the opposite side of the road and to meet the 40 foot setback requirement, the shed would be on a downward slope. Her advice to the Board was to follow the state law when responding to the (4) criteria questions.

Paul recapped the highlights from the applicant's response along with those from the Code Enforcement Officer.

With no further discussion, the Board moved to deliberate on the four questions in order to secure a vote. A copy of the "Findings of Fact" are included with the minutes and was mailed to the appellant on February 28, 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. The Board voted to approve the disability variance.

With the departure of the applicant, Shirley announced that the Town Council recommended additional training for the Zoning & Planning Board. This was the result of past applications submitted to the Board without any prior effort through Codes and/or Planning. The training would be conducted under Southern Maine Regional and more likely, a generic plan. Paul asked Shirley if the Council would also be attending the training session. Discussions continued around the training session with a few members opting for a different night instead of March 23, 2011.

Paul finalized the discussion by letting the Board members know he would contact Sherry Lord to see if she could arrange another training session for the three members who cannot attend on the 23rd of March.

Paul motioned to adjourn. The Board voted 5-0 to adjourn. Meeting adjourned at 9:08 P.M.