

**Town of Sanford**  
**Zoning Board of Appeals**

The Sanford Zoning Board of Appeals scheduled a meeting on Monday, October 24, 2011 at the Sanford Town Hall. The meeting was called to order at 7:08 P.M. by the Acting Chairperson, Paul Demers.

Members Present:                   Mark Patterson, Chairperson  
  Paul Demers, Vice Chairperson  
  Jane Bowker, Board Secretary  
  Naila Aslam-Khan  
  James Wendel  
  Kimberly Stewart

Members Absent:                   Kyle Landry

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

Paul Demers commenced with the Pledge of Allegiance.

The Pledge of Allegiance was followed by a roll call from the ZBA as to all in attendance.

Next, the Board voted to approve the minutes from the last Board meeting held on May 23, 2011.

Paul immediately addressed the next order of business, the appeal of Michelle Guillemette.

Speaking on behalf of Michelle Guillemette is her brother-in-law, Daniel Guillemette, owner of lot abutting Michelle's lot. Daniel handed out packets to the Zoning Board members and the Code Enforcement Officer which included a cover letter and points he wanted to discuss with the Board.

Paul asked the Board members if anyone had a conflict of interest with the applicant and wished to recuse himself from the hearing. Kimberly Stewart responded indicating she had prior transactions with Michelle through her banking relationship. The relationship occurred 4 or 5 years ago.

Paul asked the appellant, Michelle and Daniel, if they had a problem with Kimberly sitting on the Board to hear their case. Both indicated they did not. Members of the Board also acknowledged they were comfortable with Kimberly remaining on the Board as a voting member.

With the arrival of the Chairperson, Paul turned the gavel over to Mark Patterson. A quick briefing from the Vice Chairperson and Mark was ready to continue with the hearing.

As Chairperson, Mark Patterson called on the Code Enforcement Officer, Shirley Sheesley, to give a brief recap as to the reason and basis for the appeal.

Stepping up to the podium, Shirley announced that this was an administrative appeal based on the Code Officer's decision to deny the application for a Certificate of Occupancy to the appellant on August 16, 2011. Shirley reminded the Board that this was an administrative appeal against the Code Officer's interpretation of the Ordinance.

Next, the Chairperson asked Daniel (representing the appellant) as to what relief he was seeking.

Daniel began by having the Board refer to his letter. They were hoping to open a grooming salon working it on a part-time basis to supplement their income handling 5 or 6 dogs a day. Daniel further stated it would be a small grooming operation without any cages for boarding. The pet owners would be expected to stay while their pet is being groomed. No animals would be housed at any time. Any products sold would be sold to the pet owners only and not for the public to purchase. Location is on a dead end street and the business would be owner operated. A small sign would be attached to the outside of the home. Most of the abutting homes are owned by other family members. Daniel explained to the Board why he believed the explanation of a kennel did not apply to Michelle's business referring to chapter 280 of the Town code. He further emphasized to the Board why he felt her business fell under the definition of home occupation and repeated much of the information listed above. He next asked the Board if they had any question(s) for him or Michelle.

Mark thanked him for the excellent research.

Jane asked Daniel if he had any prior discussions with the Town as he gave a very logical argument. Daniel referred the question to Michelle. Michelle indicated that she had spoken to the Chief Code Enforcement Officer and was told she would have to apply for Occupancy as this was a new business. It was after she applied for the Occupancy that she received a letter saying her application was denied. Michelle stated to Jane she had no subsequent conversation with the CCEO following the denial. When asked by one of the Board members as to how many dogs she would likely groom on any given day, Michelle responded by saying one or two dogs at the most. When asked if she would provide any other services such as animal care Michelle stated it would be strictly for grooming.

With nothing more to add by the appellant and no more questions from the Board, the Chairperson turned it over to the CCEO, Shirley Sheesley.

Shirley announced to the Board that they would have another challenge with the definition of the ordinance and its interpretation. Shirley stated she has always tried to give a consistent answer when responding to an applicant with regard to the interpretation of an ordinance. Shirley addressed the Board by stating she first noticed the ad listing Happy Paws and notified the owner she required a permit to conduct her business. The applicant filled out the application which the Code Officer denied after review because grooming is interpreted as a kennel. She further stated previous applications had to go through site plan review. They were also located in similar residential zones to Michelle's situation. However, it is not allowed in a SFR zone even if she were to go through the site plan review process unless zoning was changed. The CEO reminded the Board she did make the right interpretation when she denied the applicant a permit to have her business.

Next, the CEO had the Board members review the application from Michelle for a dog and cat grooming salon in her basement. Nothing referenced a home occupation in order to assist her in making her decision. When the applicant filed the appeal, she indicated this would be a home business which is also not permitted in the SFR zone. Tonight, we're saying it's a home occupation! It's changing from the original application. She did agree that the applicant had a good response to the questions. However, if a use is not listed in the ordinance it is prohibited and grooming was not listed. She also referred to a situation with hair going down the drain if you're operating a dog grooming business and that should also be looked at.

The question was asked by Paul Demers if their water system was septic or through the municipal water supply. The applicant, Michelle, responded that their water system was on a septic system.

Shirley responded that regardless they would have to have some sort of a filter system in order to avoid hair going down the drain. If a decision is made tonight to list this as a home occupation, there should also be a restriction as to the number of pets as this will affect the zoning ordinance.

The CEO referenced an example such as a home beauty salon as a home occupation. You have one chair and one customer at a time. If you should consider this a home occupation do you want to limit this to one dog or one cat at a time? The CEO stressed that she knows the applicant wants to do this on an appointment basis but past experience with two other groomers, located in the RR zone, ordered restrictions to the number of pets allowed.

When asked the question if all home occupations had to go through site plan review, the CEO responded by saying no, but for a kennel, yes.

Jane Bowker, Board member, asked Shirley to define the difference in the properties between the applicant's property and that of the other two groomers.

Shirley responded with the applicant's zone being in the Single Family Residential Zone and the other two groomers reside in the Rural Residential Zone, allowing for their business following site plan review.

Paul Demers asked the CEO if the applicant applied today as a home occupation listing everything discussed earlier, would she consider granting her the permit?

If given strong parameters she might consider granting the permit but difficult to respond to favorably as the hearing tonight was for an administrative appeal.

Some examples were shared between the CCEO and the Zoning Board of Appeals as to kennel vs. home occupation vs. Single Family Residential & Rural Residential Zones vs. one dog or pet at a time. For several minutes, Shirley and the Board discussed the definition of a dog kennel (Sec.280-5 of the Town Ordinance).

With no further comments from the CCEO, the Chairperson asked if there were any person or persons wishing to speak before the Board regarding the hearing.

Next, the Chairperson turned the meeting over to the appellant for their final say.

The appellant referenced the application stating he saw nothing on the application where it defined a "home occupation" or a "business occupation". He also understood that it would be virtually impossible to define every acceptable occupation that could be listed under "home occupation" and why it was not listed on the Certificate of Occupancy Application. The appellant also made reference to the hair situation and stated that the owner had a filter on their system, and where it was a septic system; there would be no burden on the Town's water system. Daniel reiterated that there would only be one table and one sink to wash the pets, thus, eliminating the question as to grooming two or more pets at one time. Most of what was covered early by the applicant was repeated to the Board assuring them that their intentions were as reflected in the beginning.

Jane asked the appellant how they would control a barking dog as this could be a noise issue with a neighbor. The appellant responded saying the grooming of dogs would take place in the basement stressing it would be one dog at a time for grooming and, therefore, saw it as a non-issue.

Naila asked the appellant how long it would take to groom one dog. The appellant turned the question over to Michelle, owner of the grooming salon. Michelle responded saying it would depend upon the type of dog being groomed. A dog requiring a haircut could take up to 2 ½ hours, at the max.

Jane asked Michelle if the dogs are dropped off and the owner returns later to recover their pet.

Michelle responded saying some pet owners remain with their pet until the grooming is over. Otherwise, the owner returns at a time given by the groomer.

Paul confirmed with the appellant that should a pet owner fail to return at a specific time to recover their pet, the pet would remain with the groomer until the owner arrived. With no further questions, the hearing was closed to the public so the Board could vote on the appeal.

Note: You may review the Zoning Board of Appeals decision listed in the “Findings of Fact” dated October 24, 2011, and attached to the minutes.

Board took a (5) minute recess before hearing the next applicant.

The Chairperson announced the next applicant at approximately 9:16 P.M.

The Chairperson called the 2<sup>nd</sup> applicant, Justine Farley, to announce she was next. Justine is requesting an administrative appeal on the basis the CEO denied an after-the-fact building permit for a landing and patio.

Next, Mark called for conflict of interest among members of the Board. With negative response, he asked the applicant if she had any conflict of interest with the Board members. Her response was negative. The Chairperson turned the meeting over to the CCEO to give a brief description as to why Justine was denied a permit.

Shirley Sheesley, Chief Code Enforcement Officer stepped up to the podium. The CEO began with her enforcement issue of August 15, 2011 against the appellant for violation of a shoreland zoning ordinance. A copy of the letter was given to the Board as part of their packet. The violation referenced (3) points; structure (patio), setbacks and backdoor landing. The letter was the basis for the applicants appeal.

Next, the Chairperson addressed the applicant, Justine Farley, announcing her administrative appeal and what remedy the applicant was seeking.

Justine began by stating she had put down a patio and backdoor landing without a permit not realizing a permit was required and she had not considered a patio to be a structure. In May, Justine spoke to the DEP indicating to the Board that the State, apparently, had different guidelines than the Town. Her purpose of the patio was to prevent water runoff and to add value in respect to her property.

In terms of land area, Mark Patterson asked the appellant for clarification as to which property she was referring to.

Justine said this was on the front side of her property and referenced the map and lot number.

Mark asked the applicant if the properties were all joined as one or was she getting (3) different tax bills.

Justine confirmed she was receiving (2) different tax bills and wasn't sure about another piece of property she purchased two years ago.

Mark explained the advantage and disadvantage of combining the properties as one, especially with the 20% land use rule. Justine confirmed that most of her back lot is consumed by a septic system.

In the Board reviewing earlier documents, Paul noted a letter from DEP whereby DEP noted the violation and sent a letter to the applicant in reference to the Natural Resources Protection Act.

Trying to clarify the DEP's 25' setback, Jim Wendel explained the 25' setback associated with the Permit by Rule, and further commented that the applicant need comply with any local regulations. Paul attempted to clarify the DEP's Permit by Rule and the Town's ordinance regarding the 75' setback from the water. Paul went on to ask the appellant as to when she constructed the patio. Although she couldn't say exactly, it was estimated the patio was built several years prior.

The appellant asked the Chairperson as to what made her patio a structure. She was under the impression that a structure had to have walls, a roof etc., etc. Mark deferred the question to Shirley and told the appellant that she would have another chance for rebuttal following the CEO's presentation. With no further questions, the hearing was turned over to the CEO for rebuttal.

The CEO commenced by reiterating that this was an administrative appeal and she supported her reason(s) for denying the applicant a permit through several exhibits, all part of their packets. She further maintained that she did interpret the ordinance correctly and that this appeal should be denied. Shirley went over the DEP's Permit by Rule, informing the Board this had nothing to do with the shoreland zoning rule on the 75' buffer requirement. In displaying the exhibits so the Board and the appellant could view, she lettered her exhibits accordingly;

A – Permit Denial

B – Application from the applicant

C –Photographs taken on June 16, 2011 (showing the proximity to the water)

D – Definition of a structure, as outlined in the ordinance. A copy was given to the appellant.

The structures do not meet the minimum setback requirement from the water. They were built after the ordinance was in-place. The patio is considered a structure under the definitions in the ordinance. If a structure, it needs a permit and must comply with setback. The patio does not have a permit and does not meet with setbacks. She also referenced Sec. 270-14A of the Town Ordinance and discussed non-vegetative services. She further explained the separation of the lots by the public road, whereby the lot on the opposite side of the road is where the septic system is for the other lot where the home is located. Much of what has been discussed is also listed in the letter from Codes denying

the permit. By use of blocks, she went over the DEP's requirement for filling the cracks using gravel or sand. It is still considered a structure even when taking the proper steps to ensure the water runoff feeds the vegetation. These blocks again wouldn't qualify for shoreland zoning. They are used for storm water management. Shirley also referenced the violation notice from DEP of April 11, 2011. She concluded her presentation by saying it was obvious with the information provided, she was correct in denying the applicant a permit.

Mark asked the Board if they had any questions for Shirley. Jane responded by asking Shirley to verify the applicants appeal as she had checked "other" instead of "error" on the application form. Shirley repeated what she had repeated all along. The applicant was appealing an action made by the Code Enforcement Office under an administrative appeal.

Naila made reference to the fact that her zoning ordinances were out-of-date and she could not make reference to the latest definition listing patio as a structure. A couple of the other Board members also had the same problem.

With no further questions for the CEO, the Chairperson next turned their attention to the appellant.

Justine informed the Board that she did not understand the 20% impervious rule and thought that with all of her property she would qualify. Discussion went back and forth over the legal road which separates her property.

The Chairperson again clarified to the appellant that the patio and the wall were considered a structure as defined in the zoning ordinance.

Paul asked the appellant if there was anything there before the patio was installed? The appellant indicated to the Vice Chairperson that a flagstone was there before the patio.

With no further questions from the appellant, the Chairperson closed the hearing to the public so the Board could vote on the appeal.

Note: You may review the Zoning Board of Appeals decision listed in the "Findings of Fact" dated October 24, 2011, and attached to the minutes