

**Town of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals scheduled a meeting on Monday, October 15, 2012 at the Sanford Town Hall. The meeting was called to order by Mark Patterson at 7:07 P.M.

Members Present: Mark Patterson
Naila Aslam-Khan
James Wendel
Kimberly Stewart

Members Absent with Notice: Kyle Landry, Jane Bowker & Paul Demers

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

Minutes from the ZBA hearing of September, 10, 2012 were voted on and approved.

With NO Old Business to discuss the Board moved to the Pledge of Allegiance.

Next came the appeal of Joel Fougere of 35 June Street, Sanford, ME 04073, requesting a Dimensional Variance for a porch and deck on property located at 35 June Street (Map H26, Lot 12). Property is located in the Single Family Residential Zone (SFR).

With no conflict of interest from the Board members, the Chairperson called upon the Chief Code Enforcement Officer to give a brief statement as to what gave rise to the appeal and the basis for it.

For the record, Shirley Sheesley announced her name and title as Chief Code Enforcement Officer.

Shirley referenced her letter of September 26, 2012 notifying the appellant of a violation following the review of a mortgage survey showing the existing structure only eight (8) feet from the side property line. Pursuant to Section 280-42.G of the Town Zoning Ordinance, the minimum required setback is ten (10) feet.

Next, the Chairperson called upon the appellant, Joel Fougere.

- a. David Carpenter represented the appellant with the appellant in support.
- b. Seeking relief from the side setback in order to keep the existing structure.
- c. Andrea & Joel Fougere bought the house from the original owners.

d. The enclosed porch was done by the previous owner and is also in violation of setback requirement.

e. Setback unknown by appellant when the porch was built in 1983?

f. Review of document(s) shows the porch was also enclosed in 1983.

g. Appellant handed out documents showing photos of deck, porch and house tax map.

Appellant confirmed with the Chairperson, Mark Patterson, a permit was issued for the deck in 2008. When asked if Codes had inspected the deck after completion, the appellant wasn't sure but responded with a "yes, I think so".

A recent Class D mortgage survey was done and it was noted that the deck was not within the required setback.

Between the appellant's property line and the neighbor directly next to him there is a 15 foot wide strip, housing sewer and water lines.

Mark made comment as to a Class D survey and its tendency to be somewhat inaccurate.

After using three (3) of the visible pins, appellant was able to determine that the addition to his home and the deck were in violation from the required ten (10) ft setback by two (2) feet.

Reference was made to the boundary survey performed by the mortgage company.

The Chairperson went on to explain to the appellant that he must answer the four (4) criteria questions in a Dimensional Variance appeal, in the positive, in order to be granted a variance.

Next, the appellant was asked if he would like to address the four (4) questions. The Chairperson corrected his statement indicating there were eight (8) questions required of the appellant before a determination by the Board.

The appellant proceeded with question one (1) elaborating on each of the eight questions.

With nothing further from the appellant, Shirley Sheesley was called to give her rebuttal.

Shirley gave a brief chronology referencing that the Town has had a Zoning Ordinance since 1953 and the home was built in 1956!

In August of 1983 a permit was issued to enclose the porch. In July of 2008, a permit was issued for the 12' x 24' deck. No record of it being inspected. Violation for the porch built in 1983 was apparently not caught by Codes Enforcement earlier. Shirley went on to

highlight questions 2, 3 and 5, giving her analogy on the three questions. She summarized by stating that the deck could be reduced by two (2) feet to meet current setback requirements. She would probably excuse the porch since the violation was not noted by a previous Code Officer and it was done over twenty years ago.

Mark asked for Shirley's interpretation following comments from the Board regarding the deck and the porch. The Chairperson wanted clarification as to the appeal.....was the variance appeal on the deck or the porch?

Board member Jim Wendel, an experienced engineer, wanted to review the owner's deed for possible clarification.

The Class D mortgage survey only referenced the deck.

Question came up regarding a patio vs. a deck and did both warrant scrutiny under the same guidelines with regard to setbacks.

Shirley responded that a flat surface, such as a driveway for example, is not reviewed similar to an actual deck (structure). When a deck is attached to the home it becomes part of that home and subject to the ordinance. If the deck is detached from the home it must be located ten (10) feet from any other structure.

Unclear as to the setback of the porch since the initial concern was the deck.

From a practical point, ZBA member Jim Wendel expressed concern that the situation with the deck and now the porch could present a difficult situation for the owners if they were to sell their home in the future. The angle in the left corner of the lot appears to be a 97 degree angle, as indicated on the deed, and not a 90 degree angle. Jim asked the appellant if he had any thoughts on having the property professionally surveyed.

As Mark expressed to the appellant, the mortgage company will not go forth on a loan until the deck issue has been resolved.

Discussions back and forth between the Board and the appellant.

With no further questions from the Board to the CEO, the Chairperson asked if there was anyone present at the hearing that would like to speak in favor or against the appeal.

The CEO for Sanford, Jamie Cole, suggested the appeal be postponed (continued) in order to give the appellant time to check with his abutting neighbor since his neighbor recently had their property professionally surveyed. This would allow the appellant a more accurate measurement to determine what actual amount the appellant will need if a variance was granted.

Mark agreed that more work is needed before the Board makes a decision.

More discussion centered around the appellant, ZBA Board and the neighbor. Discussions included property line adjustments etc., as a few options to look at.

Dave Carpenter asked the Board Chairperson that if the appellant removed the deck and left the porch as is, would that erase the violation? Respectively, any decision with regard to the question falls under the responsibility of the Codes Department.

The ZBA Board and all members in support suggested to the appellant that he consider tabling the hearing until he could produce more information.

Motion was made to accept continuance of the hearing for a future date. Board voted 4-0 to accept.

Meeting adjourned at 8:13 P.M.