

**Town of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals scheduled a meeting on Monday, September 10, 2012 at the Sanford Town Hall. The meeting was called to order by Mark Patterson at 7:13 P.M.

Members Present: Mark Patterson
Paul Demers
Jane Bowker
Naila Aslam-Khan
James Wendel
Kimberly Stewart

Members Absent without Notice: Kyle Landry

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

The Chairperson commenced the meeting with the Pledge of Allegiance.

Minutes from the ZBA hearing of August 13, 2012 were voted on and approved.

Next came the appeal of Michael Hall & Jessica Durgin of 33 Farview Drive, Sanford, ME 04073 for property located at 93 Brown Road, Tax Map R20, Lot 21, in Sanford. Property is located in the Rural Mixed Use Zone (RMU) and the Shoreland Zone.

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.

Shirley referenced her letter of August 17, 2012 notifying the appellant of a deck that had been added to the house without a permit. The deck is located within 75-feet of the Shoreland zone buffer. This is in violation of the Town Code.

Next, the Chairperson called upon the applicants, Michael Hall and Jessica Durgin

1. A Determination of Standing confirmed.
2. Jessica Durgin handed out a package to the ZBA Board prepared by the applicants.
 - a. Exhibits of deck(s) showing the deck closest to the water.
 - b. Pictures from the Town showing the water levels before and after the dam.draw down. Dates on the pictures are unknown. Some of the pictures dated back to 1982. More recent pictures taken in 2007 showed the property as well as current pictures.

c. Water levels remaining constant today according to dam operator. No erratic changes to the levels.

d. The size of the current deck would remain the same, only replacing posts.

e. Told that no permit was taken out for the existing deck.

f. Deck has been there for a long time.

g. Questioning why the assessor hadn't picked up on it (deck) before.

h. Junkyard conditions existed with previous owner.

i. When asked the approximate age of the house. Response; built in 1986. No deck was showing in the picture. No access to the home from the front, only from the side.

The Chairperson asked if there were any further questions from the Board to the appellants. A brief recap of where they were and what the appellants were asking for. The Chairperson asked the appellants to read their response to the four questions with regard to a Dimensional Variance for the public record (See Section IV page 5 of the applicants application.)

Mark made note that a lot hinges on the water level at the time the deck was built.

Jane Bowker, a Board member, commented that this appeal possibly bordered on an Administrative Appeal?

A verbal description of an Administrative Appeal was presented to the appellants.

With no further questions, Mark called on Shirley for her rebuttal.

Shirley gave the following recap with regard to a previous owner of the property.

A. In 1985 an appeal for a Dimensional Variance was filed by a Mr. Phillips. They were asking for a 21' setback on the front lot line and ?? ft (not audible) from the right-of-way. Also, a 14' setback from the side lot line.

B. The ZBA agreed to the side lot setback variance and the right-of-way setback variance.

C. The owner agreed to meet the 75' shoreline setback.

D. A plot plan was provided by the owner, Mr. Phillips, in 1985 that shows his property, which he presented to the Board for viewing. The property did not extend all the way to the shoreline.

E. The variance was granted in 1985. The home was built in 1986 showing a 4' x 12' porch.

F. Shirley pulled additional file information so the Board & appellant could see the changes done to the property over the past several years without permits. She was able to point out the high water line from pictures taken previously (some of the dates and interaction communications are not audible). She explained the way to get accurate measurements is to measure horizontally and not down hill as that would obviously give

a greater number. Shirley also emphasized that the setback requirement from the water in 1990 was the same as today, 75 feet minimum.

G. Decks were built after 1990.

H. Previous owner had “no trespassing” signs posted and the decks went unnoticed as a result.

I. In 2012 the current owners applied for a permit to put in dormers. When Shirley went out to inspect the work she discovered the decks. She wrapped up her abuttal by recapping the above noting again the violation with the deck being within the 75’ setback from the high water mark.

With no further questions from the Board to the Code Officer, the Chairperson asked if there was anyone present that would like to speak in favor of the appeal.

Next, the appellants spoke briefly recapping previous findings and the fact that the violation remained on the books with the previous CEO and nothing was done.

Some inaudible comments in the background.

Some comments by the Board indicated that the dam might have been opened during the time some of the pictures were taken giving a false impression of the actual water line.

On both sides of the home where it was subject to water frontage the maps (pictures) in 1985/1986 depicted the distance from the water to the house was 75 feet.

Conversation from the appellant regarding talks with the Town Manager and the possibility of getting a conditional agreement in order to keep the deck. Again, not all of the conversation was audible.

Paul did explain that would fall under a “consent agreement” between the Town and members of the Town Council.

Paul suggested viewing a 1985/1986 tax card if that was available from the applicants. Paul further stated the evidence submitted would make for a difficult case in granting an appeal.

More conversation between the Board and the appellants regarding the pictures, water levels, setbacks etc., etc. Bottom line, the deck was built without a permit within the 75’ setback.

The hearing was closed to the public and the Board commenced with deliberations, followed by their conclusions.

You may review the Zoning Board of Appeals decision listed in the “Findings of Fact” dated September 10, 2012.

Old Business:

None

New Business:

None

Meeting adjourned at 9:03 P.M.

Please note, the DEP was notified of this meeting along with the abutters.