

**City of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals scheduled a meeting on Wednesday, April 9, 2014 at the Sanford City Hall. The meeting was called to order by Mark Patterson at 7:00 P.M

Members Present: Mark Patterson
Kimberly Stewart, Secretary
Jane Bowker, Chairperson
Kyle Landry
Paul Demers, Vice Chairperson
Joel Plourde

Members Absent with Notice: Naila Aslam-Khan

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

Appellants: Matthew Gardner, Scarborough Woods, LLC
Brad Morin, Attorney for Scarborough Woods, LLC
David Levesque
Richard Levesque
Carol Levesque
David Bowles, Abutter to Levesque Hearing

The ZBA meeting commenced with the Pledge of Allegiance.

Approval of Minutes

Minutes were approved for February 26, 2014 with a vote of 5-0-1; motion made by Mark Patterson, seconded by Kim Stewart with Paul Demers abstaining as he was absent from meeting.

Old Business

There were no old business items to discuss.

New Business

1. Dimensional variance appeal of Scarborough Woods, 11 Grammar Street, Tax Map H29, Lot 41A, Sanford, ME 04073.

The appellant, Scarborough Woods, LLC was represented by Matthew Gardner and Brad Morin, Attorney for Scarborough Woods, LLC.

When the Chairperson asked if any Board member had any conflict that would prevent them from being objective, Board members Mark and Kim informed all

present of their association with Bourque & Clegg in a professional capacity. It was determined Mark and Kim could be objective in the case. A motion to allow Mark and Kim to act on this item was made and seconded. A vote was taken and the motion passed 6-0.

The Chairperson called upon the Code Enforcement Officer to give a brief statement as to what gave rise to the appeal and the basis for it.

Shirley stated the case is based on the denial of a building permit. The appellant is seeking relief from city code Section 280-27(C) which covers nonconforming lots and building setback noncompliance.

Brad Morin, attorney said the property is located at 11 Grammar Street and described how the lot with the swimming pool became a separate lot from the lot with the house on it. The appellant believes the nonconforming lot is already present and the current owner did not create the nonconformity. Mr. Morin presented photos of the two lots as they are right now, and stated the previous owner's whereabouts are unknown.

Board member Patterson asked for clarity on ownership. Mr. Morin replied that Mr. Hogue owns the pool lot, while Scarborough Woods owns the house lot. Discussion took place on ownership.

Mr. Morin then went over the eight criteria utilized for the determination of granting or denying a dimensional variance. Other questions from the Board were if the building was legally condemned and how the appellant came to purchase the property. Discussion took place on:

- how the original lot came to be two individual lots with one lot being less square footage than the zone allows
- a court case that allows a property owner to request a variance in situations like these
- what the appellant would like to do with the property
- driveway location for the property
- how the house lot size compares with the surrounding lot sizes

Chair Bowker asked if anyone had any questions for Mr. Morin.

Mr. Patterson asked what Mr. Morin's professional opinion to his client would be if the appellant was not successful tonight. Mr. Morin replied he could not disclose this information. Mr. Patterson then asked what the appellant's other options would be; discussion followed.

Chair Bowker asked Mr. Morin what property was on either side of the house lot; Mr. Morin replied the pool lot and Grammar Ave.

Chair Bowker asked Shirley Sheesley, Codes Enforcement Officer to present her side of the case. Ms. Sheesley said the appellant's request is for a dimensional variance, it

is to separate lots 41 & 41A of tax map H29. She feels this request should be denied because it does not meet the intent of the ordinance and all 8-criteria of a dimensional variance request are not met. She presented exhibits with explanations to the Board to support her reasoning for a denial. The exhibits included graphs, tax maps and ordinance excerpts that were adopted in 1995 that showed both parcels as one, and opinions from the city attorney and Maine Municipal Association (MMA) legal services regarding this case.

After presenting her case to the Board, Ms. Sheesley said she didn't think the appellant met all eight (8) criteria of the test to receive the variance and explained why.

Discussion took place on what the process would be regarding the issuance of permits if the appellant is not granted his request and if the appellant was able to resolve the issue and have both properties restored to one parcel.

Brad Morin, appellant's attorney, didn't feel the Board would set a precedent if they granted Scarborough Woods, LLC a variance citing this case was a an unusual/unique circumstance and, if the Board granted the variance, the appellant would be able to improve the neighborhood.

Mark Patterson asked Mr. Morin to explain how the practical difficulty point was not an act of a previous owner; Mr. Morin replied he believes the lot split was unintentional. Mark then asked how much the appellant paid for the property since the appellant stated he would sustain significant economic injury if his request was denied. Mr. Morin stated the appellant paid \$20,000 for the property. Discussion followed.

Jane Bowker confirmed that the town (city) does consider the house inhabitable (referring to the placard placed on the building by the codes office) by what the CEO wrote in correspondence with both MMA legal services and the city attorney regarding the placard. Ms. Bowker then asked what Mr. Morin's position was on a statement made by MMA's legal service regarding the merging of the two properties. Discussion followed.

Ms. Bowker outlined the process in determining a decision to the appellant.

Ms. Bowker asked if there was anyone in the audience who wanted to speak for the appeal, against the appeal, or just wanted to make a comment; there was no one.

Matthew Gardiner said the appellant's interest is to improve the look of the neighborhood and is going to spend another approximate \$40,000 in improvements to fix the building.

Shirley Sheesley added that she has never physically inside the building so she can't say what improvements need to be done inside the home.

The public hearing closed at 8:30 P.M. The Board then deliberated the 8 criteria for a variance request.

The results of the Board's voting may be viewed in the "Finding of Facts" dated April 9, 2014 and posted along with the minutes.

2. Dimensional variance appeal of David J. Levesque, 172 Westview Drive, Tax Map R14C, Lot 4, Sanford, ME, 04073.

When the Chairperson asked if any Board member had any conflict that would prevent them from being objective, Board member Mark disclosed that David Levesque and his father did excavation work for his company and member Kim disclosed she does normal banking transactions with Carol. It was determined Mark and Kim could be objective in the case. A motion to allow Mark and Kim to act on this item was made and seconded. A vote was taken and the motion passed 6-0.

The Chairperson called upon the Code Enforcement Officer to give a brief statement as to what gave rise to the appeal and the basis for it.

Shirley stated the case is based on the CEO 2/25/2014 letter regarding nonconforming lots. The appellant is seeking relief from a 75-foot street frontage requirement so the front portion of lot 4 may be transferred separately from the rear portion near the brook.

The Board determined there was sufficient standing to hear the case.

David Levesque, the applicant, presented a copy of the original Far View Subdivision Plan showing this property as two separate properties. Over time, these lots were combined. Mr. Levesque is trying to purchase only one of the original lots (the lot by the street). The appellant believes there is no issue and he should be able to purchase the front lot since the original subdivision plan shows two lots and there is a deed on file for each lot. Some discussion took place.

Chair Bowker asked Shirley Sheesley, Codes Enforcement Officer to present her side of the case. Ms. Sheesley presented the Board with documents from the property file that included the letter to Carol Levesque, copies of the deeds that were submitted with Ms. Levesque's inquiry, copy of the map submitted with the inquiry, and a copy of the subdivision plan that shows lots 4 and 6 combined into lot 4A because the septic system is on one lot and the house is on another lot. Ms. Sheesley then read her letter to Ms. Levesque to the Board. Discussion took place on the nonconformity of the rear lot:

- how to create frontage for the rear property
- if the original owner ever went back to Planning Board to merge the two lots
- the current owner of the rear property selling her portion to an abutter
- combining the rear lot with the appellant's lot under the nonconforming requirements of the ordinance

- response from DEP due to the rear property being in the shoreland zone

Ms. Sheesley pointed out the applicant would need to meet all four (4) points of the undue hardship test of a dimensional variance request in the shoreland zone.

Ms. Bowker asked if anyone had any questions for Shirley. The Board wanted clarification on whether or not there was a minimum lot size in the RP zone.

David Levesque presented the Board with a copy of the GIS map. Mr. Levesque then said even if the Board said the rear lot needed access, the rear lot is not usable as the property is in the shoreland zone. He then went over the four criteria he needs to pass and explained why he should be granted the variance.

Mark Patterson said he would feel uncomfortable granting the variance because he doesn't feel the four criteria are met. He then asked Shirley if she requested legal advice from the city attorney. Ms. Sheesley responded she had not since she never received an actual building permit with supporting information for this request. Discussion took place on the sale of illegal lots, if the codes office will post something on this property since the nonconforming lot issue has come to light, and what may need to happen if the variance cannot be granted.

The Board agreed they would feel more comfortable tabling this case until they received a legal opinion. Discussion followed.

Ms. Bowker asked if there was anyone in the audience who wanted to speak for the appeal, against the appeal, or just wanted to make a comment.

David Bowles, an abutter at 180 Westview Drive, said he was present to give the Board some information. Mr. Bowles presented a history of the purchase of the rear lot. Discussion took place.

Mark Patterson made a motion to table the application for two weeks. Paul Demers seconded the motion. A vote was taken and the motion passed 6-0.

A motion was made by Mark to adjourn. The motion was seconded by Kyle and the Board adjourned at 10:35 P.M.

Dated April 9, 2014

Scarborough Woods/Levesque