

**City of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals scheduled a meeting on Wednesday, April 23, 2014 at the Sanford City Hall. The meeting was called to order by Jane Bowker at 7:00 P.M

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

Members Absent with Notice: Kyle Landry
Naila Aslam-Khan

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

Appellants: David Levesque
Carol Levesque

The ZBA meeting commenced with the Pledge of Allegiance.

Approval of Minutes

The minutes were not ready for approval.

Old Business

1. Dimensional variance appeal of David J. Levesque, 172 Westview Drive, Tax Map R14C, Lot 4, Sanford, ME, 04073. This is a continuation of the April 9, 2014 meeting.

Jane Bowker said the Board has received a waiver from the applicant and asked if they needed to do anything on the waiver since the applicant was present.

Paul stated he was under the impression the applicant wasn't participating in the meeting and the case was dropped. Discussion took place.

Paul made a motion the Board accepts the waiver at the applicant's request to continue the hearing from the previous meeting with no additional testimony. Kim seconded the motion. The motion passed 5-0.

Jane closed the public hearing as there was no other discussion.

Jane called for deliberations and review of the four questions of the undue hardship test.

Paul made a motion that the Board not hear the case due to the fact this is not a relevant issue for the Zoning Board of Appeals because it is outside the scope of the power and duties of the Board, City Code Section 280-23. Joel seconded the motion.

Paul explained what the duties of the ZBA are and gave his reasons why he believed this was not a case for the Board to decide: lots appear to meet dimensional requirements; the situation is a self-created hardship; and there is no action from the code officer for the applicant to appeal. Discussion followed.

Joel agreed with Paul; Joel didn't feel it was the job of the Board of Appeals to fix other agency's errors, inefficiencies, etc.

Mark thought it was a unique physical circumstance in the fact that there was an illegal lot, but also felt if the ZBA intervenes in land-owner screw-ups; it would set a precedence He said there were other legal means to solve the situation; he explained why he feels the ZBA can't grant the variance request.

Discussion took place on whether or not the Board could hear the case and if the Board should table the application again tonight in order to get some legal advice.

Kim said the applicant would probably need a decision from the Board in order to be released from the closing. She also feels the applicant has the right to be heard.

The Board agreed the lot the applicant is going to purchase is a legal lot and the issue is in regards to the title of the property; the Board does not correct title issues.

The Board reopened the public hearing.

David Levesque, applicant, said he would like to have a decision so he could have closure.

Shirley stated the purpose of the request was because the rear lot didn't have any frontage and the ordinance has a nonconforming lot section that states nonconforming lots must be combined if under the same ordinance.

David stated if the Board is now considering his lot nonconforming, he questioned if he should be requesting a use variance instead of a dimensional variance. The Board told David his lot is not nonconforming as stated in a letter from the code office. Mr. Levesque said he was appealing the code officer's letter, which would be an administrative appeal. Discussion took place on whether or not an administrative appeal would be appropriate, lot splits (the city assessor will be splitting the lots this year), ownership, and deeds.

Paul doesn't want to table the application and believes the request should be denied. If the applicant didn't agree, then he would have to appeal the decision to a higher court.

Mark asked if David's title attorney researched the property. David replied his title attorney did do the research and called the city's code enforcement officer.

Kim called Paul's motion to not hear the applicant's case to the table. A vote was taken and the motion failed 2-3.

Mark made a motion to continue deliberations on the use variance. Kim seconded the motion. Jane asked if there was any discussion.

Joel questioned how this could be a use variance since it is a title issue. Mark said it is a use variance and explained why. Discussion followed.

Kim asked if the city sent a letter to the banks regarding creation of illegal lots. Shirley stated the city does not get involved in the transfer of lots. She was asked to determine dimensional standards and basic zoning information for this lot.

Carol (Levesque) asked if the Board was able to reverse the vote taken on Paul's motion. Jane explained the process for a vote reversal.

Mark made a motion to proceed with the appeal. Jane asked if there was any further discussion. A vote was taken and the motion passed 3-2 to review the undue hardship test.

Jane made a motion that the application does not meet Undue Hardship Test #1 because the property does not have to yield the highest value it just has to yield a reasonable return. There was no second so there was no vote taken.

Mark made a motion that the application does meet Undue Hardship Test #1 because the present use of the property cannot be issued a building permit or be maintained without the variance. Kim seconded the motion. Jane asked if there was any discussion.

Paul read the CEO's letter to applicant and asked where the problem was because there was only one lot. Mark said the applicant is asking for a use variance on only a portion of the lot.

Shirley reminded the Board the application was for a dimensional variance, not a use variance. The application was presented under the undue hardship request because the lot was within the shoreland zone. Discussion followed on how to proceed because the Board is not sure what the applicant is requesting.

Mark withdrew his motion and Kim withdrew her second on Mark's motion.

Mark made a motion to table this appeal and refer this case to the city attorney for the following:

1. Can the Board legally act on this application?
2. What type of variance is being requested as it is unclear on the application?
3. Does the Board have the authority to make a decision?

There was no second to Mark's motion – motion failed.
Discussion followed.

David asked the Board to move this application forward and seek legal opinion for future cases. Discussion followed.

Mark made a motion to close the public hearing. Jane seconded the motion. The motion passed 5-0.

Jane was confused as to why the request was being reviewed as a dimensional variance so why was the Board reviewing the undue hardship criteria. Shirley said, during the previous meeting, this was due to the property being in the shoreland zone, so Jane said this was more of a shoreland variance request.

Paul made a motion the Board table the matter and request legal opinion from the town attorney to guide the ZBA as to their authority in this matter and provide procedural guidance on this matter.

Mark seconded the motion and added does the ZBA have jurisdiction on this case, are lots 4 and 6 without the back lot legal lots, and what type of variance would the ZBA be empowered to hear on this matter?

Jane asked if there was any further discussion; there was none.

A vote was taken and the motion passed 5-0.

New Business

There were no new business items to discuss.

Adjourn

A motion was made by Mark to adjourn. The motion was seconded by Paul and the Board adjourned at 8:26 P.M.

Dated April 9, 2014

David J. Levesque