

TOWN OF RAYMOND
401 Webbs Mills Road
Raymond, Maine 04071

ZONING BOARD OF APPEALS
Public Hearing
MINUTES

Monday, January 29, 2001

ATTENDANCE: Peter Leavitt, Chairman; Aurel Gagne; Lawrence Murch; Michael Higgins; Jim Stephenson; and Jack Cooper, Code Enforcement Officer.

Call to order. Peter Leavitt called the meeting to order at 7:05 p.m. at the Town Hall.

2. Consideration of previous minutes dated December 18, 2000.

MOTION: Aurel Gagne motioned to accept the minutes of December 18, 2000 as written. Seconded by Michael Higgins.

VOTE: Unanimous.

3. Fielder, Shirley & Ernest Map 66 Lot 35 42 Whittemore Cove Rd.

Requesting an Administrative Appeal to enclose an existing deck 37' from Sebago Lake.

DISCUSSION: Ernest Fielder addressed the Board explaining that it is 37' from the lake to the existing structure which is an extension of the foundation wall and the deck is back 3 ½' from there. Mr. Fielder further explained that they would like to enclose a 10 x 14' section of the deck off the kitchen with glass. The deck is 85 x 6' to 10'.

Mrs. Fielder stated that she had been approached by a neighbor (unnamed) who indicated to her that they were in support of the enclosure. Taylor and Beverly Smith-Petersen were present and indicated that they were in favor of the project. There was no one present in opposition.

Mr. Leavitt explained that there would be no fact finding required in this matter, as it is an Administrative Appeal.

Mr. Higgins asked Mr. Cooper to explain the basis for the denial of the building permit. Mr. Cooper responded that the request for a building permit was denied because the enclosed portion of the house would be closer to the lake. Mr. Cooper further explained that it has been the Board's position for many years that a deck is a deck and is not to be roofed in and not to be closed in. Mr. Cooper further explained that the deck is part of the structure but it cannot be closed in. Mr. Murch added that Pat Coughlin set the rule back when he was Chairman of the Appeals Board.

Mr. Leavitt asked if the deck is part of the footprint. Mr. Cooper responded that yes the deck is part of the footprint and does not constitute volume only square footage.

Mr. Leavitt reinforced the Board's policy that decks cannot be enclosed to create a separate room when it involves an encroachment on the lake. Mr. Leavitt stated that this definition will not be found in the ordinance but is a policy of the Board and is specific to encroachment on the lake. Mr. Leavitt clarified with Mr. Cooper that if the enclosure were in any other direction other than closer to the lake it would not be an issue. Mr. Leavitt further explained that, if this were a variance request, the ordinance would not allow the Board to allow further encroachment on the lake. Mr. Leavitt stated that this is not a variance request but an administrative appeal. Mr. Leavitt asked how Mr. Cooper had arrived at the definition that this request is in violation of the ordinance. Mr. Cooper responded that the request would be in violation of the ordinance as determined by the Appeals Board's past policy but not strictly through the ordinance.

Mr. Fielder stated that, in the current edition of the Shoreland Zoning Ordinance, a deck and a structure are equal. Mr. Fielder also stated that the house is not going to encroach any closer to the water by the rules in the Ordinance. Mr. Fielder further stated that a prior policy should be in the ordinance if passed by the Town and not subject to just the Code Enforcement Officer but the Town should adopt it. Mr. Fielder indicated that Mrs. Fielder had checked with two other towns that told them there is nothing in State law that stops them from being allowed to add to existing decks. Mr. Fielder also stated that there is an existing partial roof already over the deck and that part of the original pour is beyond the deck.

Mr. Leavitt explained why the Board developed the policy regarding decks as follows: applicants would come to

the Board for a request for a porch or deck on their property and at that point in time the Board was liberal on those sort of things and would say OK. Six months or a year later the same individual would come back and say that they wanted to enclose that porch. The Board being rather liberal and wanting people to have fee use of their property would grant that. A year after that the same individuals would come in and ask if they could have a permit to put a deck off that new room. As far as the extension of decks and turning them into screen rooms or sunrooms, eventually those rooms were turning into bedrooms and a further request or application to build off of those. What was happening is they were getting closer and closer to the lake. At some point Pat Coughlin established a policy which says, as far as encroachment on the lake is concerned, we were going to treat decks the same way as a part of the structure, the same as we're governed by the variance requirements, which is very clear in the State Ordinance. The State Ordinance says that the Zoning Board of Appeals will not grant any requests that will move the structure closer to the lake and by the structure meaning rooms.

A discussion followed regarding retaining walls.

Mr. Leavitt stated that all similar applications he has seen have been denied.

Mr. Fielder stated that nowhere in the ordinance does it say that he can't enclose the deck. Mr. Leavitt agreed with that statement. Mr. Fielder stated that his understanding was that we work under the ordinance. Mr. Leavitt responded that it is primarily the charge of the Board to look at the ordinance and interpret it in a very limited, structured type of method.

Mr. Fielder asked how the Harvey's were allowed to build a deck. Mr. Cooper responded that there was a patio already under it and a patio is considered a deck as long as he does not go beyond the edge of the patio. Mr. Fielder stated that he has a patio underneath his deck and a deck over that. Mr. Cooper responded that it is not enclosed and that is the difference. Mr. Fielder stated that the roof over the deck goes out 7' of the 10' that they are asking for. Mrs. Fielder argued that they would be building within the original foundation and referred to the retaining walls. Mr. Leavitt asked Mr. Cooper if the retaining walls were part of the footprint. Mr. Cooper indicated that they were not. Mr. Leavitt stated that the retaining walls are not part of the foundation. Mr. Fielder disagreed stating that they were part of the original pour. Mr. Cooper responded that it is not an enclosed foundation it is just an 8" wall.

A discussion followed regarding the Harvey's deck. Mr. Cooper explained that the Harvey's deck did not require Appeals Board approval because there was an existing patio in place and as long as they didn't go any closer to the lake they can have a deck, not an enclosed deck.

Mr. Fielder stated that at the time the house was built, the setback was 25' then it went to 35' and then it went to 75' and now it is 100', but the house itself was built conforming to all the rules at the time and has not had a variance to modify the deck. Mr. Leavitt responded that the issue is that the set back from the lake, once set by ordinance, and makes any of those structures within that setback, non-conforming.

Mr. Fielder stated that there would be no drainage change or further environmental impact on the lake caused by enclosing the deck.

Mrs. Fielder asked why this request would be allowed in other towns and not in Raymond. Mr. Leavitt responded that the State sets up a model ordinance and the Town can be more restrictive than the State

Mr. Leavitt confirmed with Mr. Cooper that retaining walls do not constitute a foundation. Mr. Cooper reiterated that he did not issue a permit due to the existing Appeals Board policy regarding enclosed decks. Mr. Leavitt confirmed with Mr. Cooper that a deck is considered the same as any other portion of the structure according to the Shoreland Zoning provision.

Mr. Leavitt explained that the Appeals Board is not held to precedent or consistency and that each case is judged on its own merit. Mr. Leavitt explained that this policy has been in place for a number of years and it could potentially open the floodgates to everyone who owned a deck within 100' of the Shoreland if they were to do likewise. Mr. Leavitt further explained that once you commit to enclosure and roofing, you do shed water and it does not percolate the way it would normally if it hit the ground.

MOTION: Mr. Leavitt motioned to table the application to the February meeting to allow the Board to consult with the Town Attorney for guidance. Seconded by Aurel Gagne.

VOTE: Unanimous.

4. Other business.

a. Proposed Ordinance Changes. Mr. Cooper explained the proposed ordinance changes to the Board.

b. Board Policy. A discussion followed regarding the Board policy on enclosing decks. Mr. Stevenson suggested clarifying the policy for an ordinance amendment to be voted on at the 2002 Town Meeting.

c. Chair rotation. A discussion followed regarding chair rotation. Chair rotation will take place at the June meeting.

5. Adjournment.

MOTION: Jim Stevenson motioned to adjourn the meeting. Seconded by Larry Murch.

VOTE: Unanimous.

ADJOURNMENT: Mr. Leavitt adjourned the meeting at 8:12 p.m.

Respectfully submitted,

Elisa A. Trepanier
Recording Secretary