

TOWN OF RAYMOND
401 Webbs Mills Road
Raymond, Maine 04071

ZONING BOARD OF APPEALS

Public Hearing

Monday, August 27, 2001
7:00 P.M. at the Town Office

ATTENDANCE: Michael Higgins, Chairman; Peter Leavitt; Aurel Gagne; Stephen Mairs; and Jack Cooper, Code Enforcement Officer.

1. Call to order. Michael Higgins called the meeting to order at 7:04 p.m.
2. Consideration of previous minutes dated July 30, 2001.

MOTION: Aurel Gagne motioned to accept the minutes of July 30, 2001 as written. Seconded by Aurel Gagne.

VOTE: Unanimous.

3. Smith, Mark J. Map 15 Lot 23 11 Crescent Shore Rd.

Requesting a Variance to retain a deck 3' from the high water mark.

Continuation.

DISCUSSION: Mr. Higgins offered an outline of the appeal for those present stating that a deck had been constructed within the 100' setback area. Mr. Higgins also noted the erosion control improvements made by the Smith's.

Mr. Smith submitted statements from previous owners stating that there was a deck built down by the water in May 1989 as well as a petition from 20 neighbors attesting to the presence of a deck by the water. Mr. Smith emphasized the safety and erosion control benefits provided by the deck and recognized that he had expanded on the deck without a permit. Mr. Smith stated that he had designed the expansion of the deck based on other similar structures on the lake.

The Board then reviewed the submitted materials.

Mr. Smith also submitted copies of a portion of the Shoreland Zoning Provisions from 1991, which he believes repeal the previous ordinance in its entirety. Mr. Cooper responded that the ordinance was revised and updated in 1991, but not repealed in its entirety.

Mr. Leavitt confirmed with Jack Cooper that there was no valid building permit issued in 1989 for the Simmons to build a deck and therefore, it is an illegal deck. Mr. Leavitt stated that the appeal is actually a request for a variance to grant an expansion of an illegal deck. Mr. Leavitt then addressed the findings of fact indicating that the appellant doesn't meet the criteria for item one or item four.

Mr. Higgins stated that he was hoping for dated evidence but would accept the deck being reduced in size.

Elizabeth Harvey, former neighbor, attested to the existence of the deck.

Steve Harvey asked Jack Cooper how long building permits are kept. Mr. Cooper responded "forever". Mr. Cooper stated that the ordinance went into effect January 1989 and the building

permit for the house was dated May 1989. Mr. Cooper further explained that the deck is a separate structure, not attached to the house, and therefore would have required a separate permit.

Mr. Harvey then asked how long Jack Cooper had been the Code Enforcement Officer. Mr. Cooper responded "1981".

Shirley Fielder addressed the Board and stated that from her experience, permits from 1989 are not always available.

MOTION: Peter Leavitt motioned to deny the request for variance to expand the deck based on the appellants inability to fulfill items one and four of the hardship rules.

DISCUSSION: Mr. Leavitt stated that the Board is unable to vote on the existence of an illegal structure and clarified that this application is not for an administrative appeal but a request for variance.

Mr. Smith asked if there were a statute of limitations on the deck, as it had existed for so long.

Mr. Higgins confirmed that the Board was clear on Mr. Leavitt's motion. Seconded by Aurel Gagne.

Mr. Cooper then addressed Mr. Smith's question on statute of limitations by explaining that the Maine Building Officials had requested a 20-year statute of limitations but the State had refused this request. Mr. Cooper further explained that there is no grandfathering of an illegal structure. There was a discussion as to whether or not the original structure would be considered legal if the expansion was denied. Mr. Cooper indicated that he would consult the town attorney in this regard. Mr. Leavitt stated that from the evidence provided, the original deck was never legal.

Mr. Smith asked if he could enter into a consent agreement with the Town. Mr. Higgins responded that the Zoning Board of Appeals was not empowered to enter into a consent agreement. Mr. Higgins then explained the authority of the Zoning Board.

VOTE: Three in favor. One (1) opposed (Michael Higgins).

Mr. Leavitt explained that a consent agreement could be explored with the town as an option. Mr. Cooper added that this could be done through the Board of Selectmen. Mr. Cooper further explained that the appellant could also file for an administrative appeal.

Mr. Higgins noted that given the vote of the Appeals Board, it would seem unlikely that the Code Enforcement Officer's position would be overturned.

MOTION: Peter Leavitt motioned to withhold additional fees, fines, or enforcement action for six months. Seconded by Aurel Gagne.

VOTE: Unanimous.

4. Harvey, Elizabeth & Stephen Map 67 Lot 1 50 Whittemore Cove Rd.

Requesting an Administrative Appeal in response to a Notice of Violation observed 5/30/2001 for "erecting a deck less than 100' from the high water line that extends closer to the water than the existing patio below".

DISCUSSION: John Veilleux, Esq. addressed the Board as the representative to the Harvey's. Mr. Veilleux explained that the Harvey's had recently purchased and renovated the home and that Mr. Cooper had issued a legal permit on 9/28/00 for a 26 x 10' deck to be built above the existing patio. Mr. Veilleux stated that in June 2001 Mr. Cooper visited the site and

determined that the deck was in violation of the Shore Land Zoning Provisions as the deck overhangs 2' from the patio due to the 2' garrison overhang. Mr. Veilleux then submitted photos of the deck for the Board's review. Mr. Veilleux indicated that the permit doesn't state that the deck must be no closer to the water than the existing patio.

Shirley Fielder, neighbor, spoke in favor of the request.

Tom McNulty, neighbor, spoke in favor of the request.

Mr. Cooper gave an explanation of the permit stating that the deck was to be 26 x 10' over a 30 x 10' concrete patio but that the deck is actually 2' closer to the water than the existing patio. Mr. Cooper further explained that building over the existing patio is allowed but building closer to the water is not allowed.

Mr. Veilleux stated that Mr. Harvey did not build the deck.

Elizabeth Harvey explained that her understanding from Jack Cooper was that the deck couldn't be made larger than the patio and that it is a matter of ambiguity.

MOTION: Peter Leavitt motioned to overturn the decision of the Code Enforcement Officer regarding the violation based on a miscommunication between the builder and the Code Enforcement Officer, a valid building permit was issued, and the structure was in existence for nine months before a violation was cited. Seconded by Aurel Gagne.

VOTE: Unanimous.

5. Other business.

Mr. Higgins introduce Stephen Mairs, new ZBA member;

A site walk was scheduled for 9/23/01 at 10 a.m. at the District One Fire Station;

Mr. Cooper updated the Board on the status of violations. Mr. Cooper indicated that the properties in violation of the junkyard ordinance have until 9/17/01 to comply but that if substantial progress is made he won't "bag em".

Mr. Cooper updated the Board on the Fielder matter stating that arguments will be heard in District Court on 9/6/01;

Mr. Cooper updated the Board on the Bolduc and Wills violations stating that they had been turned over to the Town Attorney.

6. Adjourn.

MOTION: Peter Leavitt motioned to adjourn the meeting. Seconded by Aurel Gagne.

VOTE: Unanimous.

Respectfully submitted,

Elisa A. Trepanier
Recording Secretary