



Kelly W. McDonald
kmcDonald@mpmlaw.com
Direct: (207) 523-8219

July 11, 2024

BY OVERNIGHT MAIL

Sandy Fredricks, Administrative Assistant
Zoning Board of Appeals
Town of Raymond
401 Webbs Mills Road
Raymond, Maine 04071

Re: Shoreland Permit Granted to Daniel O'Connor
Notice of Administrative Appeal

Dear Sandy Fredricks:

Please find enclosed the eight (8) copies of the Zoning Board of Appeals Application with the following materials:

1. A completed Board of Appeals application on behalf of Karen and Bill Burke;
2. A concise written statement indicating what relief is requested and why it should be granted;
3. A copy of the Shoreland Permit as Exhibit One; and
4. The Town of Raymond Cumberland County, Maine 2024 Property Map #74 as Exhibit Two.

Please let me know if you require any additional information for the filing of this appeal. Thank you for your attention in this matter.

Sincerely,

Kelly W. McDonald

cc: Karen and Bill Burke



**TOWN OF RAYMOND
APPLICATION TO THE
ZONING BOARD OF APPEALS**

Staff Use Only:		Received Date
Application Fee	\$ _____	
Notice Fee \$8.00/abutter	\$ _____	
Publishing Fee	\$ _____	
Escrow	_____	
TOTAL	_____	
<i>Fees will be calculated after application is submitted prior to being scheduled for Hearing</i>		

Name of Applicant Karen and Bill Burke
Mailing Address 824 Roosevelt Trail, #155, Windham, ME 04062
Primary Phone 207-775-6464 C H W email bburke207@gmail.com
Date property acquired: (month and year) April, 2009

Name of Owner (if different than applicant) Daniel and Kathleen O'Conner
Mailing Address Unknown
Town: _____ State _____ Zip Code _____
Primary Phone _____ C H W email _____

Property Address (street number and name): 36 Murch Landing Road
Town of Raymond Map 74 Lot 6 Zone Unknown
Deed Reference Book Unknown Page Unknown

The undersigned applies for the following:

- 1. ADMINISTRATIVE APPEAL. Applicant requests relief from the decision, or lack of decision, of the Code Enforcement Officer. The undersigned believes that (check one)
 - An error was made in the denial of the permit
 - Denial of the permit was based on the misinterpretation of the ordinance
 - The permit was not approved or denied within a reasonable period of time
 - Other: See attached. The Permit was erroneously granted.
- 2. VARIANCE (the information listed on page 3 must be submitted)
- 3. CONDITIONAL USE PERMIT For _____ (use) in _____ Zone
- 4. VARIANCE PROVISION(S) FOR NON-CONFORMING Lot Structure Use

I have read, understand and agree to the above instructions and conditions. I also authorize any Board Member or other Town Officials to enter onto the site. I certify that the information contained in this application and its supplement is true and correct.

Date: 7/11/24 Appellant: Karen Burke
Date: _____ Property Owner: _____

Kelly W. McDonald
kmcdonald@mpmlaw.com
Direct: (207) 523-8219

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BY OVERNIGHT MAIL

Zoning Board of Appeals
Town of Raymond
401 Webbs Mills Road
Raymond, Maine 04071

Re: Shoreland Permit Granted to Daniel O'Connor
Notice of Administrative Appeal

Dear Chair and Members of the Zoning Board of Appeals:

This firm represents Karen and Bill Burke (the “**Appellants**”). Ms. Burke is the owner of a parcel located at 9 Sheldon Road, Raymond, Maine (the “**Appellants’ Property**”). Mr. Burke is married to Ms. Burke. I am writing to provide additional information relating to the Burkes’ Notice of Administrative Appeal dated July 11, 2024 (the “**Appeal**”).

Background

The Appeal is from the issuance of Shoreland Permit Number 2024146 (the “**Permit**”) granted to Daniel O'Connor (the “**Applicant**”). See Exhibit 1 (Shoreland Permit). The Permit was granted by Chris Hanson, the Code Enforcement Officer for the Town of Raymond (the “**Town**”). The Permit purports to grant Mr. O'Connor the right to install a new, second, dock on the property located at 36 Murch Landing Road, Raymond, ME (Parcel 074006000000) (the “**Subject Property**”). According to Town records and the Cumberland County Registry of Deeds, the Subject Property is owned by Ingrid Bischoff. It is not clear when or if the Subject Property was purchased by Mr. O'Connor and Kathleen O'Connor, although they are named as owners of the Subject Property in the Permit.

The Appellants’ Property is located next to the Subject Property on the eastern shore of Sebago Lake. There is a permanent dock already located on the Subject Property. The new proposed dock would be the second dock on the Subject Property.

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Appellants have long been concerned about a second dock on the Subject Property. In 2019, Russell Goldstein (the then-owner of the Subject Property) was trying to sell the Subject Property. Appellants considered purchasing the Subject Property (or part of it) to prevent any intrusion upon their privacy. On September 3, 2019, Appellants met with Scott Dvorak, the then-Code Enforcement Officer for the Town, to discuss how the Subject Property could be developed. Mr. Dvorak assured Appellants that the Town's Shoreland Zoning Ordinance restricted development of the Subject Property. Among other things, Mr. Dvorak told Appellants that no second dock could be installed because the Subject Property did not have enough frontage on the lake. Mr. Goldstein did not attempt to install a second dock.

On or about May 12, 2020, Ms. Bischoff purchased the Subject Property from Mr. Goldstein and began building a large house. In early September 2021, Ms. Bischoff and her contractors were discussing improvements to the Subject Property that appeared to violate the Town's Shoreland Zoning Ordinance. On September 15, 2021, Appellants met with Alex Sirois, the then-Code Enforcement Officer for the Town to address their concerns. Mr. Sirois reiterated the protections that the Shoreland Zoning Ordinance provided, including the fact that the Subject Property did not have enough frontage on the lake for a second dock. Ms. Bischoff did not attempt to install a second dock.

Appellants first met the O'Connors on May 26, 2024. The O'Connors introduced themselves as the new owners of the Subject Property. During that meeting, Kathleen O'Connor told Ms. Burke that they were thinking about installing a second dock. Ms. Burke told Ms. O'Connor that two prior CEOs had come to the conclusion that the Shoreland Zoning Ordinance would prohibit a second dock.

Concerned about this conversation, Mr. Burke called the town office on May 29, 2024. He left a detailed voicemail describing the conversation with the O'Connors and asking for a call and confirmation that no dock would be approved. He did not receive a response. He called again on June 14, leaving a similar message. He did not receive a response. He went to Town Hall in person on July 1 to follow up on his voicemails. He was told that Chris Hanson, the Town's Code Enforcement Officer, was on vacation but that he could meet with Mr. Burke on July 9, after his return from vacation.

Appellants both met with Mr. Hanson on July 9, 2024 at 2:00 p.m. During that meeting, Appellants learned for the first time that Mr. Hanson had issued the Permit approving a second dock. Appellants shared with Mr. Hanson the conclusions that two prior CEOs had reached: that under the Town's Shoreland Zoning Ordinance, the Subject Property did not have enough lake frontage to permit a second dock. In front of Appellants, Mr. Hanson pulled up the Town's GIS system. He re-measured the lake frontage of the Subject Property and concluded (in agreement with his two predecessors) that there was not enough lake frontage. He told the Appellants that he had "made a mistake" in issuing the permit and that he would call the O'Connors on June 10 to apologize. He also informed Appellants that that there was a thirty-day window in which to appeal the issuance of the Permit. He was uncertain as to what date the Permit had been issued.

On the same day they spoke with Mr. Hanson, July 9, 2024, Appellants requested and received a copy of the Permit. They learned, for the first time, that it had been issued on June 6, 2024, more than thirty days prior. Appellants immediately engaged undersigned counsel and engaged with the O'Connors to let them know that the Permit had been issued in error.

Appellants file this administrative appeal of the issuance of the Permit because the Town's Shoreland Zoning Ordinance does not permit a second dock on the Subject Property.

Good Cause Exists to Justify Late Filing of this Notice of Appeal

Under the Town's Shoreland Zoning Ordinance, an administrative appeal "shall be taken within 30 days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty day requirement." Raymond, Me., Shoreland Zoning Ordinance § 350-7.7(C)(1)(a). Good cause exists here to justify waiving the thirty day requirement.

The Maine Law Court has provided judicial guidance on when it is appropriate to apply a "good cause" exception to an appeal deadline for the issuance of a building permit. *See, e.g., Viles v. Town of Embden*, 2006 ME 107, ¶¶ 6-18, 905 A.2d 298. In *Viles*, the town erroneously issued a building permit. *Id.* No notice was required to be given to abutters, and none was given. *Id.* The abutter learned of the erroneously issued building permit seven months later and immediately contacted town officials. *Id.* The Law Court agreed that these circumstances constituted "good cause" to excuse an appeal that was five months late. *Id.* In doing so, the Law Court identified several factors to be considered, including whether the appellant received notice of the issuance of the permit, the amount of time the appellant waited to file the appeal after obtaining actual knowledge of the permit, and whether the municipality had violated its own ordinance. *Id.* ¶ 13.

Each of these factors support a finding of "good cause" here to waive the thirty-day requirement. Appellants here received no notice of the permit. On the same day that they learned about the permit, they retained undersigned counsel. This notice of appeal is being sent for filing only two days after that, and only five days after the deadline passed. Finally, the Town has violated its own Shoreland Zoning Ordinance in issuing the Permit as conceded by Mr. Hanson and as more fully explained below.

It is also worth considering that Appellants have been diligent about monitoring the state of development of the Subject Property for years. They were assured by two prior CEOs that a second dock on the Subject Property is prohibited by the Shoreland Zoning Ordinance. As soon as they heard Ms. O'Connor suggest that they were considering a second dock, they reached out to the Town. They didn't stop at a single voicemail; they left two detailed voicemails and appeared at the Town Office twice in person to discuss the issue with Mr. Hanson. Unfortunately, it took weeks to get a response from the Town. It was that delay, not Appellants' delay, that has caused the expiration of the appeal period.

For all of these reasons, Appellants request that the Board waive the requirement that a notice of appeal be filed within thirty days of the issuance of the Permit and accept this appeal as timely.

The Permit Was Issued In Violation of Raymond’s Shoreland Zoning Ordinance

The Permit was erroneously issued. If the O’Connors are permitted to install a second dock at the Subject Property, such an installation would constitute a violation of Raymond’s Shoreland Zoning Ordinance.

The Town’s Shoreland Zoning Ordinance provides that:

No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in § 350-6.2, a second structure may be allowed and may remain as long as the lot is not further divided.

Raymond, Me., Shoreland Zoning Ordinance § 350-6.4(A). Section 350-6.2 set a minimum shore frontage of 225 feet for a residential lot abutting a lake. *Id.* § 350-6.2(B)(1)(a). In other words, a second dock may only be allowed for a lot with a shore frontage of at least 450 feet. Importantly, the same section provides guidance for how to measure shore frontage: “Shore frontage shall be measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water elevations.” *Id.* § 350-6.2(B)(2).

Attached as Exhibit 2 is Map 74 of the Town’s 2024 Property Maps. Lot 6 on Exhibit 2 is the Subject Property. A straight line drawn between the intersections of the side lot lines with the shoreline reveals a distance of approximately 375 feet, only 83% of the minimum distance needed for two docks.

Issuance of the Permit under these circumstances was an error. Notably, this conclusion is consistent with the conclusion reached by Scott Dvorak in 2019, Alex Sirois in 2021, and Mr. Hanson on July 9, 2024.

Conclusion

Based on the foregoing, Appellants respectfully request that the Board:

1. Waive the thirty-day requirement for filing an appeal and accept this Notice of Appeal as timely; and
2. Order the Code Enforcement Officer to issue a stop-work order to the O'Connors, rescind the Permit, and direct that any work done pursuant to the Permit be removed and remediated.

Sincerely,

A handwritten signature in blue ink that reads "Kelly McDonald". The signature is written in a cursive style.

Kelly W. McDonald

cc: Karen and Bill Burke



SHORELAND PERMIT

General/Location

Permit No: 2024146
Permit Type: SHORELAND PERMIT
Use Type: Residential
Project Cost: 0
Proposed Use: SINGLE FAMILY

Site Address: 36 MURCH LANDING ROAD
City/State/Zip: RAYMOND, ME 04071
Parcel No: 074006000000
Lot: 000
Subdivision: N/A

Project Description: NEW DOCK

Applicant/Owner

Applicant: DANIEL O'CONNOR
Address: 36 MURCH LANDING
City/State/Zip: RAYMOND, ME 04071
Phone: 609-947-1476
Email: danjoc64@gmail.com

Owner: O'CONNOR, DANIEL & KATHLEEN
Address: 36 MURCH LANDING
City/State/Zip: RAYMOND, ME 04071
Phone: 609-947-1476
Email:

Contractors:

Name: Sebago Dock & Lift
Address: 96 Roosevelt Trail
Phone: 207-252-3218
Email:
License #:
Exp. Date:

Fee	Amount	Payment Date	Amount
Shoreland Permit	\$50.00	06/06/2024	\$50.00
Total Fee: \$50.00		Total Paid: \$50.00	

This permit is approved on the basis of information provided by the applicant regarding his ownership and boundary locations. The applicant has the burden of ensuring that he has legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in now way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. It is hereby certified that the above use as shown on the plats and plans submitted with the application conforms with all applicable provisions of the Town of Raymond Land Use and Ordinance and Shoreland Zoning Provisions.

Christopher S. Hanson

Chris Hanson, Code Enforcement Officer

06/06/2024

Date





Conditions of Approval

06/06/2024

DANIEL O'CONNOR
36 MURCH LANDING
RAYMOND, ME 04071

Re: Permit Number 2024146
Subject Property: 36 MURCH LANDING ROAD, RAYMOND, ME 04071
Parcel ID #: 074006000000
Current Use: SINGLE FAMILY
Proposed Use: SINGLE FAMILY
Project Description: NEW DOCK

The approval of your permit is conditioned upon the following:

Inspections Required

- Septic Scarification inspection
- Septic Installation inspection
- Foundation inspection
- Rough in plumbing, framing, electrical inspection
- Insulation inspection
- Final Inspection

THIS MAP IS PREPARED FOR THE INVENTORY OF REAL PROPERTY WITHIN THE TOWN OF RAYMOND AND IS COMPILED FROM RECORDED DEEDS, PLATS, TAX MAPS, SURVEYS, PLANNING MAPS, AND OTHER PUBLIC RECORDS AND DATA. USERS OF THIS TAX MAP ARE HEREBY NOTICED THAT THE AFOREMENTIONED PUBLIC PRIMARY

INFORMATION SOURCE SHOULD BE CONSULTED FOR VERIFICATION OF THE INFORMATION CONTAINED ON THIS MAP. THE TOWN OF RAYMOND AND ITS MAPPING CONTRACTORS ASSUME NO LEGAL RESPONSIBILITY FOR THE INFORMATION CONTAINED HEREIN.

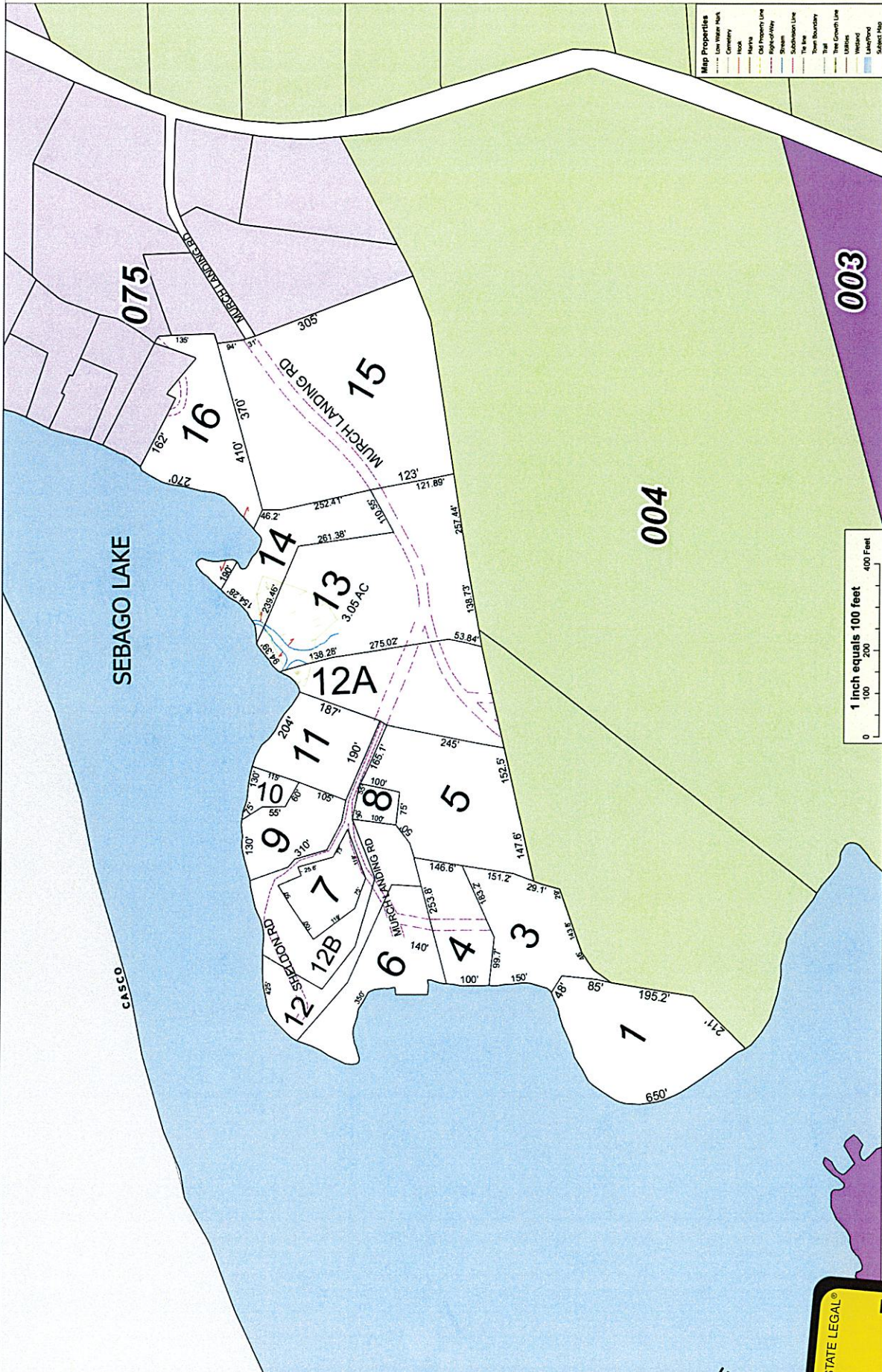
TOWN OF RAYMOND Cumberland County, Maine 2024 Property Map



Source:
Raymond Assessor's Database
Maine Office of GIS
Prepared by:
SEBAGO
Effective Date: April 1, 2024



Map 74



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EXHIBIT
2