

Town of Raymond, Maine Zoning Board of Appeals (ZBA)

Findings and Decision

September 24, 2024 ZBA Meeting:

- In Attendance: Tom Hennessey, Pete Lockwood, Fred Miller, David Murch
- Absent: Greg Dean

Application:

- Appeal Request: Administrative Appeal - RE: Notice of Violation for Installation of a Dock
- Appellant: Sheena-Jo Randall
- Property Owner: Sheena-Jo Randall (deeded right of access to Right-of-Way (ROW))
- Property Address: 32 Shore Road and Lot 62A (ROW), Raymond, Maine
- Map/Lot: 78/10 (32 Shore Road) and 78/62A (ROW)
- District: Limited Residential / Recreation I (LRR1)

Background:

On Tuesday, September 24, 2024, the Town of Raymond ZBA held a public hearing on an administrative appeal regarding a Notice of Violation (NOV) issued on August 7, 2024, by Chris Hanson, Raymond's Code Enforcement Officer (CEO), to Sheena-Jo Randall. This NOV indicates that a dock had been installed at the end of the ROW without a permit.

A public site walk took place on Saturday, September 14, 2024, at 10:00 AM at 32 Shore Road and the ROW. Those in attendance included Tom Hennessey (ZBA), Pete Lockwood (ZBA), Fred Miller (ZBA), David Murch (ZBA), Sheena-Jo Randall (Appellant), and Jason Williamson (Assistant CEO). Greg Dean (ZBA) was unable to attend the site walk. A site walk report was prepared by Tom Hennessey, read aloud at the September 24 meeting, and unanimously approved by the Board at that meeting to be entered into the official record.

Discussion:

ZBA discussion took place following the public hearing. Refer to the video record accessible online through the Town of Raymond's website or by DVD from the Raymond Town Office.

Findings of Fact and Conclusion of Law:

TOWN OF RAYMOND, ME

Chapter 350 Shoreland Zoning

§ 350-7.7 Appeals

A. Powers and duties of the Board of Appeals. The Board of Appeals shall have the following powers:

(1) Administrative appeals. To hear and decide appeals, on a de-novo basis, where it is alleged that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of these ordinance provisions.

Comments: The ZBA has the authority to hear and decide this administrative appeal. In addition, there are no Board member conflicts of interest, as the recipient of the NOV the Appellant has standing to bring this appeal, the appeal application is complete, and the appeal is timely.

§ 350-5.4 Table of Land Uses.

Table 1 - Land Uses in the Shoreland Zone

Land Use 17A (Piers, docks, wharves, bridges, boat launches and other structures and uses extending over or below the normal high-water line or within a wetland - Temporary); LRR1 requires a permit from the CEO excluding bridges and other crossings not involving earthwork, in which case no permit is required.

Comments: A temporary dock requires a permit from the CEO in order to be placed at a property located in the LRR1 district.

§ 350-7.7 Appeals.

C. Appeal procedure.

(2) Decision by Board of Appeals.

(b) When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At that time, the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

(d) The person filing the appeal shall have the burden of proof.

Comments: The Appellant's appeal application includes a letter dated August 25, 2024, from the Appellant to Chris Hanson. In that letter, the Appellant states "that the placement of the dock/structure beyond the low water markings of Thomas Pond would make that placement a permitted use of public property; the lake." The Appellant also states in this letter "It is my belief that there is no violation here. It is also my belief that I did not need a permit for placement of a dock/structure to gain access to the lake."

In its consideration of the Appeal, the ZBA reviewed information provided by the Appellant regarding the ROW and Thomas Pond:

- 1) The Appellant's deeded ownership to the ROW.*

- 2) *The ROW's shoreline, noted by the Appellant as under the jurisdiction of the Town of Raymond.*
- 3) *A large boulder that sits in Thomas Pond and abuts the land at the end of the ROW.*
- 4) *Thomas Pond, noted by the Appellant as under the jurisdiction of the State of Maine.*

It was confirmed by the Appellant that the dock in question was a temporary dock, and that she had it installed at the end of the ROW on June 22, 2024. During the site-walk, it was observed that the dock was within a few inches of touching the boulder at the end of the ROW. It was also confirmed by the Appellant that she co-owns the dock with Jonathan Stickney who owns the property at 34 Shore Road and who is also a deeded owner of the ROW. Jonathan Stickney was not at the ZBA meeting, nor did he provide any information to the ZBA with regards to this appeal.

The Appellant's primary assertion for not needing a permit to install the temporary dock is that the dock is not attached to the ROW either by the land leading to the shore, by the shore, or by the large boulder, and therefore, it is not under the jurisdiction of the Town of Raymond. Instead, the dock was installed as a free-standing structure within Thomas Pond below the low-level water line, and because Thomas Pond is owned by the State of Maine, it is open to public use. This public use includes the installation of a temporary dock, in a way that was done by the Appellant, without the need for a permit from the Town of Raymond.

During the meeting, the CEO confirmed that the State of Maine owns Thomas Pond; however, he also stated that the Town of Raymond has jurisdiction over the Town's shorelands including the land under the waters. The CEO also noted that the dock in question was not free-floating, but rather this dock was free-standing and attached/secured to the bottom of Thomas Pond, which is under the jurisdiction of the Town of Raymond.

The ZBA asked the Appellant if she had a specific ordinance item, statute, or anything else that could be referenced by the ZBA to support her assertion that either the Town of Raymond or the State of Maine allowed for the building of a free-standing dock or similar structure within a lake or pond without the need for a local permit due to the waters being open to public use. The Appellant did not have a supporting ordinance item, statute, or anything other to provide to the ZBA.

Based on its review of the ordinances, and also in consideration of the information provided by the Appellant and the CEO, the ZBA confirms that the Town of Raymond requires a permit to install a temporary dock in the LRR1 district. However, the ZBA DID NOT reach the conclusion that a permit was not required if the dock was installed as a freestanding structure within a lake or pond beyond the low-water line.

In bringing this appeal, the Appellant provided the ZBA with 1 basis point for the NOV to have been issued in error by the CEO:

- 1) *The dock was installed as a free-standing structure within Thomas Pond below the low-level water line, and because Thomas Pond is owned by the State of Maine, it is open to public use, and this public use includes the installation of a temporary dock that is attached/secured solely to the bottom of the pond.*

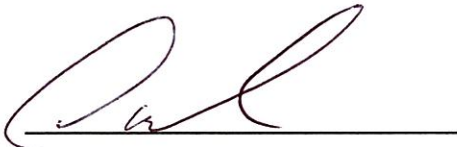
In its consideration of the Appeal, the ZBA has reviewed this point, and it finds that the Appellant HAS NOT met the burden of proof that is required for the ZBA to grant the Appellant its administrative appeal.

Decision:

Based on the above Findings of Fact and Conclusion of Law, the ZBA voted to **DENY** the Appellant its administrative appeal regarding a Notice of Violation issued on August 7, 2024, by Chris Hanson, Raymond's Code Enforcement Officer (CEO), to Sheena-Jo Randall in which the NOV is indicating that a dock had been installed at the end of the ROW without a permit.

ZBA Vote:

- Grant: 0
- Deny: 4 (TH, PL, FM, DM)



David Murch

10-1-2024

Date



Tom Hennessey

10/1/2024

Date



Fred Miller

10/1/2024

Date



Pete Lockwood

10/1/2024

Date