

TOWN OF RAYMOND
401 Webbs Mills Road
Raymond, Maine 04071

ZONING BOARD OF APPEALS

Public Hearing

MINUTES

Monday, July 31, 2000

7:00 P.M., Jordan Small School Cafeteria
423 Webbs Mills Road, Raymond, Maine

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

*Note: Aurel Gagne will not be voting at tonight's meeting but is authorized to provide input. Mr. Gagne is an alternate Board Member and all other Board Members are present.

Call to order.

Peter Leavitt called the meeting to order at 7:00 p.m. at the Jordan Small School.

Consideration of previous minutes dated June 26, 2000.

MOTION: Michael Higgins motioned to accept the minutes of June 26, 2000 as written. Seconded by Robert Fey.

VOTE: Unanimous.

Agenda amendment.

MOTION: Peter Leavitt motioned to move items 23 and 24 on the agenda to the beginning, as they are unrelated to the other 20 applications from Indian Point. Seconded by Robert Fey.

VOTE: Unanimous.

4. Carol & Earl Kline Map 8 Lot 58 109 Webbs Mills Road

Requesting a variance to place a skate park and swimming pool 25' from a pond and next to a wet land.

DISCUSSION: Mr. Kline described to the Board his plans for a skate park and swimming pool. Mr. Kline explained that Paul Lawrence, soils engineer, did a septic inspection as well as look over the property for a skate park and swimming pool with a DEP representative. Mr. Kline indicated that Mr. Lawrence saw no problems with the Kline's plans. Mr. Kline indicated that preliminary DEP approval of these plans was stated as a condition in their sales contract and that they have recently closed on the property. Mr. Kline stated that Paul Lawrence met with Dawn Holleran of the DEP and that the two of them didn't see any problems. Mr. Kline indicated that Dawn Holleran had informed him that he would need to apply for a Tier 1 Application, which the Klines have done. Mr. Kline also explained that Jack Cooper and Will Cook, also of the DEP, performed a separate inspection and found that the pond is part of the brook that feeds the nearby wet land. Mr. Kline then distributed photographs of the proposed project. Mr. Kline stated that his hardship is due to there being no other place on the property to place a skate park. Mr. Kline confirmed that the parcel contains 50 acres.

There was no one present to speak in favor of the project.

Natalie Foss spoke in opposition to the project citing noise and lighting.

Wilma Delan, Webbs Mills Road, spoke in opposition to the project.

Mr. Leavitt asked Mr. Cooper if the pond is attached to the brook and could it affect the brook. Mr. Cooper responded that Dawn Holleran of the DEP had not followed the brook far enough to see that the brook and the pond are connected but when Will Cook went out he found that the pond is definitely part of the brook.

FINDINGS OF FACT: Mr. Leavitt went over the four points of hardship in question. (See application.)

FIRST POINT OF HARDSHIP: *1. The land in question cannot yield a reasonable return unless the variance is granted.* Mr. Leavitt explained that the State is very clear that the property must give a reasonable return but that doesn't mean a maximum return. Mr. Leavitt reminded the applicant that all four points of hardship must be met. Mr. Leavitt stated that he feels the application does not meet the first point of hardship.

SECOND POINT OF HARDSHIP: *2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.* Mr. Leavitt agreed that it is a unique property.

THIRD POINT OF HARDSHIP: *3. The granting of the variance will not alter the essential character of the locality.* Mr. Fey stated that he felt it was not a sure thing that it would not alter the area i.e. noise. Mr. Leavitt agreed stating that it is not the norm in that area.

FOURTH POINT OF HARDSHIP: *4. The hardship is not the result of action taken by the appellant or a prior owner.* Mr. Leavitt stated that he would not agree with that as the applicants actions created the hardship because he was aware of the uniqueness of the property.

Mr. Leavitt explained that Appeals Board interprets the Zoning Ordinance and that approval was outside the authority of the Board and suggested Mr. Kline could take a civil action or apply for an administrative appeal. Mr. Leavitt then explained the difference between a request for variance and an administrative appeal.

Mr. Gagne stated that the applicant would still be within 100' of a designated wet land and proposing to pave 7,500 sq. ft.

MOTION: Robert Fey motioned to reject the application for failure to meet hardship number one. Seconded by Michael Higgins.

DISCUSSION: Mr. Stephenson stated that there is no question, the area is in a shoreland zone and the brook feeds a wet land. Mr. Cooper confirmed this statement.

VOTE: Four (4) in favor. One (1) abstain – Larry Murch, abutting landowner.

5. Stephen G. Yusem Map 71 Lot 5 19 Wawenock Rd.

Requesting an administrative appeal to remove a non-conforming structure to be replaced with a reduction of the non-conforming area.

DISCUSSION: Michael Yusem introduced himself to the Board stating that he would be representing his father, Stephen Yusem. Michael Yusem is also serving as the architect for the new structure. Mr. Yusem described the plans to replace the existing non-conforming structure with a new structure that would be the same size and in the same foot print with a

reduction of the non-conforming area. Mr. Yusem explained that not doing this would result in the loss of eight to ten sizeable trees that would impact the essential character of the landscape as well as the privacy of abutting neighbors. Mr. Yusem explained that the 100' year old cottage is in a state of substantial deconstruction and is being reconstructed across the lake. Mr. Yusem stated that the current structure is non-conforming on the northern most corner by approximately 8' and the stairs by 11', which will be reduced to 9' at the step. Mr. Yusem explained that moving the house back would result in the loss of seven 20" caliper trees. Mr. Yusem explained that the other options would be the cleared area that contains a service road to the boathouse that would be blocked or the proposed septic system site.

Mr. Cooper stated that he had requested the Yusem's come before the Appeals Board for an administrative appeal based on his interpretation of the ordinance which states that if you are going to reconstruct then you must meet the set backs to the greatest extent possible.

Mr. Yusem then presented two letters from abutting landowners in support of the project.

Michael Higgins asked if they were to leave some portion of the house in place, could the existing footprint be used. Mr. Cooper responded that there isn't a foundation per say, the whole thing is sitting on top of the ground and that if there was a full foundation and they were going to tear it down and use the foundation then they could rebuild on the same footprint.

Mr. Leavitt made note for the record that the two letters in support of the project were from Bryant and Carol Bernard, abutters; John and Theodora Logan; and Edmund F. Armstrong, Jr., Arborist.

Mr. Armstrong was present and addressed the Board with his professional opinion of the impact on the trees in question.

Peter Leavitt confirmed with Jack Cooper that, in Mr. Cooper's opinion, the structure could be moved back 11' and meet the 100' set back requirement.

Rich Baker of the DEP clarified that the ordinance states "to the greatest practical extent". Mr. Baker then pointed out the difference between practical and possible.

Mr. Yusem cited Article 6 of the Land Use Ordinance.

MOTION: Michael Higgins motioned to grant the administrative appeal based on the fact that the disruption of moving the structure back outweighed the benefit. Seconded by Robert Fey.

DISCUSSION: Jim Stephenson spoke in support of the motion due to the reduction of square footage of the covered area.

VOTE: Unanimous.

6. Indian Point Campground Map 52 Roosevelt Trail

DISCUSSION: Mr. Leavitt read into the record the proposed Ground Rules (attached).

MOTION: Mr. Leavitt motioned to accept the guidelines contained in the Ground Rules. Seconded by Jim Stevenson.

DISCUSSION: Robert Fey requested clarification of item #4 regarding time limits. Michael Higgins stated that he agrees with the intent of the Ground Rules but requested that the Board be flexible.

Mr. Korda requested that the applicant who has legal council present be heard first.

Bob McCrillis stated that he felt that at last months meeting, the process of an administrative

appeal wasn't explained clearly. Mr. Leavitt then read the letter dated 6/27/00 from Jack Cooper to all Indian Point applicants. John Lamoine, Esq. gave his interpretation of the 6/27/00 letter.

MOTION: Peter Leavitt motioned to amend the Ground Rules to allow applicants the right to present an administrative appeal and/or variance request. Seconded by Mr. Higgins.

DISCUSSION: Michael Higgins stated that he will agree with the motion but feels the letter of 6/27/00 from Jack Cooper was quite clear. Mr. Fey agreed with Mr. Higgins statement.

VOTE: Unanimous.

MOTION: Peter Leavitt motioned to accept the Amended Ground Rules. Seconded by Robert Fey.

VOTE: Unanimous.

MOTION: Peter Leavitt motioned to extend the Appeals Board filing deadline to August 10. Seconded by Jim Stevenson.

VOTE: Unanimous.

MOTION: Peter Leavitt motioned to allow the applicant with legal representation to present at the front of the agenda. Seconded by Michael Higgins.

DISCUSSION: Mr. Leavitt polled the audience and found the majority of the public to be in favor. Mr. McCrillis requested that some of the applicants yield their time to allow Mr. Lemoine to speak.

VOTE: Unanimous.

7. Suzanne M. McCrillis Map 52 Lot 64 Indian Point Campground

Requesting an administrative appeal in response to Notice of Violation.

DISCUSSION: John Lemoine, Esq. addressed the Board as the representative of the applicant, Suzanne McCrillis. Mr. Lemoine stated the following:

the Notice of Violation for an expansion greater than 30% and placing a structure less than 100' from the high water mark doesn't apply to this campground.

Mr. Lemoine cited the 1988 Land Use Ordinance and a review of the Planning Board minutes in 1988.

Indian Point has been a campground since 1964.

the set backs at that time were 15' around the perimeter of the property and 25' along Route 302.

according to the Declaration of Condominium, as approved by the Raymond Planning Board, appurtenances are allowed but cannot be permanently affixed to the site.

there was a 75' setback from the high water mark in effect at the time of the Planning Board approval. There was a State requirement of a minimum lot size of 5,000 square feet but the Indian Point Lots were approved at 4,2000 square feet.

The Planning Board took the position of this being a continuation of a previously existing, legally licensed, campground with only a change in ownership.

These facts show that the project was grandfathered even in 1988.

This is a universal common theory that might apply to all applications.

Recreational vehicles and appurtenances i.e. a deck or sunroom, should be able to be located anywhere on those lots so long as it is 15' back from the boundary of the high water mark.

The Planning Board approved some lots that are only 75' deep. All of the shorefront lots would have been instantly unbuildable the moment that they were approved unless there were a recreational vehicle sitting there.

Peter Leavitt clarified that the applicant was not discussing anything regarding greater than 30% expansion or definition of temporary vs. permanent, or Shoreland Zone Ordinances but that the argument is that this is a campground and therefore outside the jurisdiction of the Zoning Ordinances of the Town of Raymond. Mr. Lemoine responded that the campground is not outside the Zoning Ordinances of the town but that it predates the present standards that Mr. Cooper is trying to imply.

Mr. Leavitt then asked Mr. Cooper for a definition of Indian Point, i.e. is it a campground or individually owned lots? Mr. Cooper responded that it is a campground with individually owned lots. Mr. Leavitt asked Mr. Cooper if, by the definition of campground, does he agree with the setbacks that were in effect in 1988 regarding campgrounds in the Town of Raymond. Mr. Cooper responded that in December 1986 a 100' setback was established and that the 15' setback from park boundaries refers to the abutting properties. Mr. Lemoine referred to the 1/6/88 Planning Board Minutes (page 2 of 4) and Mr. Cooper's statement that there was a 15' setback around the perimeter and 25' to Route 302.

A discussion followed regarding lot size. Mr. Leavitt questioned whether "boundaries" include the water.

MOTION: Peter Leavitt motioned to go into executive session to consult the Town Attorney. Seconded by Jim Stevenson.

VOTE: Unanimous.

EXECUTIVE SESSION 8:19 P.M.

RETURN FROM EXECUTIVE SESSION 8:35 P.M.

Mr. Leavitt announced that the Board was unsuccessful in reaching the Town Attorney and that in an effort to pursue and expedite the agenda, the Board will proceed with the meeting.

Mr. Leavitt requested Rich Baker, Shoreland Zoning Coordinator, Department of Environmental Protection, to give an interpretation of the situation. Mr. Baker responded that he visited the site on July 8, 2000 and that his reaction to the "campground" is that it is a campground in name but when he looked at the type of facility on the property, some of them in his mind, fit the definition of recreational vehicle but many of them are on blocks and not

what Mr. Baker considers recreational vehicles. Mr. Baker went on to explain that he looks at the structures as not a whole lot different than a seasonal camp, they don't leave the site, and that he sees them as being structures under the Shoreland Zoning Ordinance. Mr. Baker stated that his reaction is that the 30% rule would apply to them if they are structures and even if you won the argument that they are RV's then unless you can clearly convince the Board of Appeals that this 15' setback is really what the issue is then he would say that anything added to the vehicles whether they be decks or screen houses or glassed in windows, are in fact structures. If you have an RV and you add those to that RV, you have a structure and the law says all new principal and accessory structures have to meet the set back requirement, which is the 100' set back requirement. Mr. Baker stated that when he was at the site he found new structures and glassed in porches either exceeding the 30% rule that you could call structures, on some of them, an expansion to the water or, if they are RVs, you've got a new structure that is being placed within the set back area. Mr. Lemoine responded that these are not structures but RVs.

Mr. Leavitt cited the 12/87 Planning Board Minutes, which state that there would be no new permanent structures built. Mr. Lemoine responded that there are only two permanent structures, which are the bunkhouses.

Ron Giroux, Indian Point, asked why it took 12 years for someone from the Town to come to Indian Point. Mr. Fey responded that there were no building permits requested which would have prompted Mr. Cooper to go out there. Mr. Leavitt explained that this issue came to Mr. Cooper's attention when a septic inspection was requested.

Julie Boucher, Indian Point, stated that there was a septic walk through five years ago. Mr. Cooper responded that when he went to Indian Point for the septic inspection he noticed a bunch of new trailers, sunrooms and Florida rooms many that appear to have been there for less than three years.

Alice Mollden, Indian Point, stated that every year someone from the Town comes to measure and take pictures.

Keith Stiles stated that the Executive Board at Indian Point suggested he obtain a building permit and that he spoke with Jack Cooper who told him that whatever the Board at Indian Point says is OK with him.

Mr. Baker suggested a legal opinion of RVs vs. structures.

A discussion followed regarding the seal of the American Board of Recreational Vehicles on each RV.

Al McGlory, Indian Point, stressed the fact that the residents at Indian Point had made every effort to protect the environment with a loon reserve etc.

Mr. Fontain, Indian Point, discussed the HUD specifications on what a trailer is and what a tent is and as far as trailers go, they go up to 400 square feet and once you go over that it's a mobile home.

Mr. Fey suggested that the Board take the case of Suzanne McCrillis tonight or get more information and guidance from the Town attorney.

MOTION: Robert Fey motioned to deny the request. Seconded by Jim Stephenson.

DISCUSSION: Peter Leavitt stated that at this point the discussion has been on a universal basis and suggested starting with the individual reviews.

Mr. Fey withdrew his motion stating it to be premature.

Mr. Leavitt suggested tabling the meeting because the Board was unable to reach legal council or going forward based on the information at hand. Mr. Leavitt then stated that the Board would proceed.

Mr. Lemoine distributed copies of Common Theory for Administrative Appeal and Indian Point Common Theory to the Board in support of Ms. McCrillis' administrative appeal.

Mr. Cooper noted that the diagram shows the trailer back 10' from where it was before and that Ms. McCrillis is now only in violation of the 30% Rule.

A discussion followed regarding the existing footprint and the 30% expansion rule.

Mr. Leavitt indicated that the burden of proof is on the applicant. Mr. Lemoine asked the Board to consider accepting sworn affidavits.

An unidentified Indian Point resident asked if new rules could be set at this point. Mr. Leavitt responded that it would not be within the authority of the Appeals Board to set new rules.

Another unidentified Indian Point resident requested the town attorney be available at the next meeting.

MOTION: Mr. Leavitt motioned to table further discussions until the Board is able to discuss the issues brought up tonight with the town attorney, specifically: the definition of campground vs. lots; temporary vs. permanent; recreational vehicle vs. structure; implied or real set backs from the water as designated under the Shoreland Zoning Ordinance of the Town of Raymond and an interpretation as to when the 30% Rule would apply. Seconded by Jim Stephenson.

DISCUSSION: Mr. Leavitt stated that it would be within his authority, as chairman, to discuss these issues outside the meeting with the town attorney. Mr. Leavitt also stated that there would be no additional filing fees required. Mr. Lemoine asked Mr. Leavitt if the Board would accept a sworn statement. Mr. Leavitt responded that he could submit anything that he wanted to.

VOTE: Four (4) in favor, one (1) opposed (Robert Fey).

8. Adjourn.

MOTION: Jim Stevenson motioned to adjourn. Seconded by Lawrence Murch.

VOTE: Unanimous.

ADJOURNMENT: Peter Leavitt adjourned the meeting at 10:08 p.m.

The next meeting of the Zoning Board of Appeals will be held on August 28, 2000, 7:00 p.m. at the Jordan Small School, Raymond, Maine.