

## ZONING BOARD OF APPEALS

Public Hearing

MINUTES

Monday, February 26, 2001

7:00 P.M. at the Town Office

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

1. Call to order. Peter Leavitt called the meeting to order at 7:06 p.m.
2. Consideration of previous minutes dated January 29, 2001.

MOTION: Michael Higgins motioned to accept the Minutes of January 29, 2001 as written. Seconded by Aurel Gagne.

VOTE: Three (3) in favor. One (1) abstain (Robert Fey).

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

Requesting an administrative appeal to enclose an existing deck 37' from Sebago Lake.

Continuation.

DISCUSSION: Mr. Field addressed the Board commenting on the opinion submitted by Town Attorney Geoff Hole. Mr. Fielder stated that the case Mr. Hole cited in his opinion is a different zoning issue than the Fielder matter. Mr. Fielder further stated that the Ordinance of the Town of Raymond gives them the right to expand up to 30% as long as it is not closer to the water. Mr. Fielder went on to say that a deck is treated as any other structure and you can expand a deck or enclose a deck as long as it is within the normal operation of a residential zone whether it is a garage, bedroom or sunroom. Mr. Fielder then requested his appeal be approved.

Mr. Leavitt referred to Mr. Cooper for an interpretation of the code, his interpretation of the Town Attorney's opinion and the basis for the denial of a building permit. Mr. Cooper responded that he did not issue a building permit because for the last 20 years the Appeals Board has said that any deck would not have a roof over it and would not be enclosed, any deck that is less than the required setback from the water. Mr. Cooper indicated that the Town Attorney agrees with the Appeals Board's position and that this position can be upheld.

Robert Fey noted that the attorney's involved seem to disagree on the definition of the word expanded; therefore, it is up to the Appeals Board to decide.

Mr. Gagne referred to Section IV of the Shoreland Zoning Ordinance and change of use stating that after it is enclosed, it is no longer a deck but an enclosed structure. Mr. Gagne stated that it is a change of use of the non-conforming part of the structure.

Mrs. Fielder stated that there would be no adverse effect on the environment. Mrs. Fielder then referred to the 30% expansion rule, the attorney's letters and the DEP. Mrs. Fielder also stated that the Appeals Board policy has not been given to them in writing nor has it been given to the Town to vote on. Mrs. Fielder requested that her case be addressed by the law and not by a policy unless the policy is voted on by the Town.

Mr. Leavitt explained that this is the first time this matter has come before the Board in the form of an administrative appeal and that in the past it has been presented as a request for a variance and in those situations hardship was never met. Mr. Leavitt further explained that it boils down to the intent of the ordinance. Mr. Leavitt referred to the Ordinance stating that the ZBA is not empowered to grant any expansion toward the lake.

Mr. Fielder stated that the view would not change and that the personal policy of the Board amounts to "zippo". Mr. Fielder requested that, if the Board decides against their case, they would like a written explanation. Mr. Leavitt responded that the minutes are public record and would serve as a written explanation, if that were the way the vote goes.

Mr. Leavitt explained that, as far as semantics are concerned, it might be that we are getting hung up on the word "policy". Mr. Leavitt suggested a better choice of words and that rather than saying an "unwritten policy", would be that the past the "interpretation" of the Board of the Ordinance. Mr. Leavitt further explained that in other words, the interpretation of the letter of the law is such that when variance requests have been brought forward regarding decks within the 100' setback from the high water line, the Board has denied them. Mr. Leavitt then noted that in the letter from Natalie Burns, Esq. she cites nonconforming structures under Section 12 of the

Shoreland Zoning Ordinance and expansions under Section C. Mr. Leavitt explained that if you read on to lower case c in that standard, it reads "no structure which is less than the required setback from the normal high water line of a water body, tributary stream or upland edge of a wetland shall be expanded toward the water body, tributary stream or wetland. A discussion followed regarding the phrase "expanded toward the water body".

Mr. Fey asked if the roof would be expanded toward the water. Mr. Fielder responded that on the sun porch the roof is going to go toward the water by about 4' more than what is there.

Mr. Fey asked if the enclosed living space would be expanded toward the water. Mr. Fielder responded that the enclosure is going to go toward the water but the deck is a structure and so by the definition of the law, no. Mr. & Mrs. Fielder stated that they are expanding by volume only.

Mrs. Fielder referred to the retaining wall connected to the foundation. Mr. Gagne stated that the retaining wall has no bearing. Mr. Leavitt stated that those are retaining walls and are not part of the footprint.

Mr. Leavitt stated that it is the essence of the Ordinance that there will be no further encroachment /expansion vertically or horizontally.

Mrs. Fielder referred to a new deck built by the Harvey's that is closer to the lake. Mr. Cooper responded that the Harvey's deck is built over an existing patio and it is not enclosed.

MOTION: Michael Higgins motioned to deny the administrative appeal for the reasons already stated. Mr. Higgins explained that it is clear that this is an expansion as the Board has interpreted it consistently for the five years he has been a member and 15 years before that. Seconded by Robert Fey.

VOTE: Unanimous.

Mr. Fielder requested a letter of explanation. Mr. Leavitt responded that this is a public hearing, therefore, the minutes are the official record and Mr. Fielder can have a copy of the minutes.

#### 4. Yusem, Stephen G. Map 71 Lot 5 19 Wawenock Road

Requesting a six (6) month extension to the Administrative Approval granted July 31, 2000.

DISCUSSION: Michael Yusem was present to represent his father Stephen Yusem regarding an extension of Administrative Approval. Mr. Yusem explained that the project was delayed as it took three months to remove the existing cottage and consequently offset the construction schedule. Mr. Yusem further explained that they did not want to pour the foundation in weather that would freeze, as it would create a substandard product. Mr. Yusem referred to some of the complications involved in removing the existing cottage, which included the presence of 2,000 bats in the attic. Mr. Yusem stated that they intend to begin construction this spring (mid June) and enclose the structure within a year.

MOTION: Michael Higgins motioned to grant the request for an extension of the Administrative Approval. Seconded by Aurel Gagne.

VOTE: Unanimous.

#### 5. Floyd, James Map 8 Lot 9A Gore Road

Requesting a 10' sideline setback reduction.

DISCUSSION: Mr. Floyd explained to the Board that during construction the building was located too close to the front line and requested a setback reduction so they would not have to move the house.

Mr. Powers, abutter, stated that he has no objection to the request.

Brian Warren, abutter, also stated that he has no objection to the request.

There was no one present in opposition to the request.

Mr. Gagne clarified that the applicant is also requesting a setback for a deck at this time.

Mr. Leavitt asked if Mr. Cooper had any objections to this request. Mr. Cooper stated that he had no objections.

MOTION: Aurel Gagne motioned to approve the 10' setback reduction. Seconded by Lawrence Murch.

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

6. Dexter, Franklin Map 1 Lot 23 289 Cape Road

Requesting an administrative appeal to install an oversized dock.

DISCUSSION: Mr. Dexter addressed the Board stating that Jack Cooper had referred him to Shoreland Zoning Ordinance Sections 3 – 4. Mr. Dexter indicated that he had spoken with Rich Baker of the DEP who explained the sections to him. Mr. Dexter explained that he wanted to install a dock so they can land a boat. Mr. Dexter stated that according to Jack Cooper, it is the proposed width that creates an oversized dock. Mr. Dexter explained that he has 600' of shorefront so there is not a navigation hazard but it is the high winds that necessitate a wider dock for stability to prevent damage to the dock and to boats. Mr. Dexter referred to neighbors who have experienced damage to docks and boats due to high winds and rough water conditions. Mr. Dexter also referred to the letter from Pro Vo that notes the variations in water levels differing by 3' per season. Mr. Cooper confirmed this statement.

Mr. Dexter stated that he wants to build a dock that would be large enough to land and work on a boat as well as provide flexibility for a boatlift, being no larger than necessary to carry on activities.

There were no comments from the public.

Mr. Murch asked how big the boat is. Mr. Dexter responded that it is a 24 – 25' inboard.

Mr. Murch asked if the dock would be removable. Mr. Dexter stated that it would be removable.

Mr. Gagne asked if the dock were floating or freestanding. Mr. Dexter replied that it is a free-standing dock on steel poles. Mr. Dexter then further described the dock.

Mr. Higgins asked Mr. Cooper to explain what the concern is with the configuration of the dock.

Mr. Cooper responded that it is the width of the dock that creates a problem as it looks like a deck over the water.

Mr. Leavitt referred to a prior case whereby in 1998 there was a request for a side-by-side dock for a handicapped person that had been denied.

Mr. Leavitt stated that the Board would have to determine this request to be an exceptional situation.

Mr. Gagne suggested using just the framework for landing and stability with a railing. Mr. Dexter replied that a custom dock would be too expensive.

Mr. Leavitt asked Mr. Cooper to explain Section 4. Mr. Cooper replied that the dock could be no bigger than necessary and that maybe the location makes the requested design necessary.

Mr. Dexter then distributed three proposals from other dock companies.

Mr. Leavitt suggested investigating other options to reduce the square footage of the dock area. Mr. Leavitt also suggested that the Board could get an independent review for guidance and to identify other options, or the Board could render a decision tonight.

Mr. Murch noted that there is 600' of frontage with large neighboring lots and that the dock would not have much impact vs. the lots on Thomas Pond which are small and close together.

Mr. Higgins indicated that if a vote were taken tonight, he would not vote affirmatively and that he would prefer further research and consideration.

Mr. Leavitt asked Mr. Cooper to consult resources to get an opinion on a side-by-side dock design with out boards on a portion of the dock.

Mr. Fey also indicated that he would not vote in favor of the request tonight.

Mr. Leavitt suggested postponing the application for 30 days. Mr. Dexter asked for clarification of the Board's request. Mr. Higgins responded that Jack Cooper and Mr. Dexter need to investigate ways to reduce the decking on the proposed dock.

Mr. Leavitt requested Mr. Dexter consult the Doc Docks one more time for any other possible design, planking vs. substructure and another independent opinion.

Mr. Cooper suggested that Mr. Dexter could get the opinion from the company he has been working with at the Dock Doctors and if they say it wouldn't be structurally sound by removing those boards then bring that information back to the Board in the form of a letter.

MOTION: Michael Higgins motioned to continue the application to the next meeting for added fact finding. Seconded by Aurel Gagne.

VOTE: Unanimous.

7. Oliver, Richard & Concetta Map 21 Lot 20 54 Notched Pond Road

Requesting an amendment to the Setback Reduction Approval granted August 28, 2000.

Mr. Oliver addressed the Board to explain the need for the amendment stating that a recent survey showed that the setback would not be adequate. Mr. Oliver stated that the foundation had already been dug.

Mr. Cooper confirmed with Mr. Oliver that the current footings are more than 100' from the water.

John McFarland, abutter, stated that he had no objection.

There was no one present to speak in opposition to the request.

Mr. Gagne noted that the applicant would still be within 50% of the setback requirement.

MOTION: Robert Fey motioned to grant the requested 11' sideline setback on each side. Seconded by Aurel Gagne.

VOTE: Unanimous.

8. Other business.

a. Elisa Trepanier introduced Don Willard, new Town Manager, to the Board.

b. Site Walks – Peter Leavitt reminded the Board that the site walks are important, particularly with applications involving the water.

c. Mr. Leavitt reminded the Board of the Town Warrant articles amending the Shoreland Zoning Ordinance and the Land Use Ordinance.

d. Mr. Gagne suggested speaking with the Selectmen regarding developing a definition of the word "expansion". Mr. Leavitt suggested the Planning Board develop a definition to be included in next year's ordinance amendments.

9. Adjourn.

MOTION: Robert Fey motioned to adjourn the meeting. Seconded by Lawrence Murch.

VOTE: Unanimous.

ADJOURNMENT: Peter Leavitt adjourned the meeting at 8:30 p.m.

Respectfully submitted,

Elisa A. Trepanier  
Recording Secretary