

**Lebanon Maine Board of Appeals**  
**December 14, 2020**

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**Members Present**

D. Wilson - Chairman  
L. Duell  
R. Demers  
D. Bruce

**Others Present**

Gil Berube - Applicant  
Mr. Morin – Berube Legal Rep  
David Salvatore - CEO

Pledge of Allegiance

Mr. Berube – 23 Paradise Row

Mr. Berube was in attendance with his legal counsel this evening. Chairman Wilson reviewed what has taken place to date in regard to an Appeal Mr. Berube had requested for a setback variance for 23 Paradise Row.

On September 22, 2020 a Public Hearing took place for the request of a setback variance for a house which was built eight (8) feet too close to the road. The Appeals Board visited the property prior to the Public Hearing.

Mr. Berube and his Real Estate Agent, Karen Cudworth were in attendance. Mrs. Cudworth thought that the Selectboard could write a statement that the Town is aware that the house does not meet the setback requirements and would not take action.

There was a letter from the Department of Environmental Protection asking not to consider the variance until a wetland's delineation was completed. Mr. Berube felt that the delineation survey was not needed because the house was on a hill.

Chairman Wilson stated to Mr. Morin that being a land use attorney, he is aware that it doesn't matter if the house is on a hill, it could be between two big hills. Rather than denying Mr. Berube the variance, Mr. Berube and Mrs. Cudworth said that the road could be moved, alter the deeds of both 23 Paradise Row and 26 Paradise Row and should have a wetland delineation by the October meeting, but no later than the November meeting.

The Board has been waiting for Mr. Berube to submit the documents that were requested and agreed upon. There was correspondence between the Code Enforcement Officer, David Salvatore and Mrs. Cudworth about the property not being in a flood zone. There is an area at the back of the property that is in wetland protection and the D.E.P. requested the survey.

Mr. Berube then stated he was considering withdrawing his appeal application. Chairman Wilson stated that if the Appeals Board required Mr. Berube through the D.E.P. to submit the documents and rather than to comply, Mr. Berube would rather withdraw his application, that does not negate her responsibility as Chairman in creating a Finding of Facts. This document needs to go to the D.E.P. for the Board is required to report to them because of the wetlands area. The Findings of Fact will also be sent to the Code

Enforcement Officer, Selectboard and the mortgagee that Mr. Berube did not comply with what he and the Board agreed to.

The Board has gone above and beyond extending the amount of time Mr. Berube had to submit the documents. The Board could extend the timeframe another 90 days allowing the additional time needed to get the documents ready or Mr. Berube could pull the application, which may remove the Appeals Board power, but the house is still eight (8) feet too close to the road. Mr. Berube cannot obtain a variance from the Code Enforcement Officer or the Selectboard, only the Appeals board can issue a variance.

If the road is to be altered, once it is done, give the revised paperwork to David. However, a wetland delineation still needs to be completed for the Findings of Fact. Member Demers asked if Mr. Berube had the other lot delineated. Mr. Berube did have the other lot delineated. Member Demers asked so the Board is finding this out only because the house was too close to the road. Mr. Berube stated that the house was on a big hill. Chairman Wilson stated that the house was on a small mound and Little River runs through the property. Due to this, the Appeals Board is required to notify the D.E.P. twenty (20) days prior to the hearing for their input.

Mr. Morin stated that he attended this evening to discuss the matter with the Board in person. Had he been in attendance at the first meeting, he would have approached the matter differently. To move a road is not that easy. The road is owned by an abutter with a right-of-way.

Chairman Wilson stated that it was not the Board's requirement to move the road. Mrs. Cudworth and Mr. Berube offered that as a remedy.

Mr. Morin explained that there have to be title searches, research into who has the right to sign the changes to the deeds for altering the road. New deeds would need to be created working with the other attorneys. He would have tabled the appeal for it is not a simple remedy. Currently the partial release for the property and deeds to be approved are in process. The variance application is looking for setback approval, if there was additional land acquired, then there would be no need for the variance.

Chairman Wilson explained that they cannot make a decision, Mr. Berube was given the extension for the paperwork and the wetland delineation. If these items had been submitted, the appeal would have been closed. The Code Enforcement Officer visited the property and erroneously measured the setback with Mr. Berube.

Mr. Morin explained that they do not have the documents needed with them at this time. Mr. Berube has spent a lot of money on engineers and lawyers to take care of the setback issue. He offered that he attended the meeting to discuss if more land was acquired and that resolved the setback, then there would be no need to have an application for a variance before the Board.

Mr. Moring asked as to why a letter is not sufficient. If there is no variance to be reviewed, why will a Finding of Facts need to be drafted, it would no longer be within the Appeals Board jurisdiction. If this is to outline what was and was not done, that's minutes.

Chairman Wilson explained that there needs to be an end result, there was no variance, there was no administrative appeal. The Findings of Fact will outline the discussions of what the Board required, the extension of time, whether or not there was follow through and or if the application was withdrawn.

The Findings of Fact will be sent to the Code Enforcement Officer, once that has been done, Mr. Berube will no longer deal with the Appeals Board, but the Findings of Fact still needs to go to the D.E.P. to let them know whether or not the delineation was completed. This will also be sent to the Selectboard and to Mr. Berube.

The Selectboard stated to protect the Town, a copy should also be given to the new owners so they are aware if the survey had been completed or not, that they were aware, and the Town will not be responsible for any issues that may arise in the future.

Mr. Morin replied that the Selectboard can do as they wish, however there are licensed brokers, real estate agents and attorneys who are required to perform their due diligence to find situations like these. He is glad that he attended this evening so that the Town and Mr. Berube are on the same page. Currently a request was submitted to LOMA to have the property removed from the flood zone.

Mr. Morin stated that Mr. Berube will work with David. If he were to formally withdraw the appeals application can he do so in writing rather than attend another meeting. Chairman Wilson replied that he could and to email it to the Land Use Clerk.

Chairman Wilson let Mr. Morning know that once everything is done, he will also be sent a copy of the Findings of Fact. The Board is going to extend Mr. Berube another 90 days to submit the requested documents per Mr. Morin's request. If they decide to withdraw the application, they will send a letter. If they will be adjusting the road, a copy of the new road structure and the needs will need to be submitted.

#### Sylvia Danenhower – R14-17-A

Chairman Wilson gave the Board a recap of the appeal requested by Sylvia Danenhower. The Public Hearing was held on June 29, 2020. The builder and real estate agent represented Mrs. Danenhower during the public hearing. The property was located on the corner of Gully Oven Road and Brianna Drive, map R14 lot 17-A. The Board determined that a small home could be built on the property for Mrs. Danenhower inherited it. An inquiry in regard to whether or not the Board has the authority to issue a variance for a property to acquire the needed road frontage on a private road, right-of-way.

The matter of the applicant should be responsible for contacting the residents of Brianna Drive themselves to discuss access to the lot Brianna Drive and contributing to a road association.

Chairman Wilson made the motion to stand on the Findings of Fact Conclusion of Law requiring to keep access/egress on Brianna Drive and not Gully Oven. Member Demers seconded the motion. The vote was taken. The motion carried 3/3 in favor.

Timothy Bragdon – 1384 Carl Broggi Highway

Chairman Wilson brought the matter of the Timothy Bragdon appeal to the Board. Prior to the Board making a decision, Mr. Bragdon withdrew his application. Chairman Wilson explained that just as if Mr. Berube withdraws his application, a Findings of Fact would still need to be drafted to close the case for the Appeals file even though Mr. Bragdon does not legally need one.

Chairman Wilson is asking the Board for an extension until the next meeting to have this completed for the Board to review due to the history/complexity of the case. Member Demers made the motion to allow Chairman Wilson an extension for the time that she needs to complete the document. Member Bruce seconded the motion. The vote was taken. The motion carried 3/3 in favor.

Don Leuchs – Appeals Member

Member Leuchs had made it known that due to COVID19, he did not want to attend meetings and questioned attending remotely. Which at the time was not permissible. Since then, attending meetings remotely has been allowed. Notice to Mr. Leuchs was sent and no reply was given. The Appeals Board cannot remove a member from the Board, they need to go through the Selectboard in order to have someone removed. Member Demers asked if this was due to missing a certain number of meetings, to which Chairman Wilson confirmed.

Member Bruce made the motion to remove Don Leuchs as an appeals board member per the letter Chairman Wilson will submit to the Selectboard. Member Demers seconded the motion. The vote was taken. The motion carried 3/3 in favor.

Chairman Wilson continued to say she would like to make a request to the Selectboard to appoint Alternate Member Perry as a full member of the Board. Member Bruce made the motion appoint Member Perry as a full member and not an alternate in Don Leuchs place. Member Demers seconded the motion. The vote was taken. The motion carried 3/3 in favor.

Member Demers made the motion to adjourn. Member Bruce seconded the motion. The vote was taken. The motion carried 3/3 in favor.