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June 29
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**Lebanon Maine Board of Appeals
Public Hearing Minutes
Monday, June 29, 2020 @ 6:00 pm
Sylvia Danenhower –Corner of Gully Oven Road & Brianna Drive – Map R14, Lot 17-A**

Members Present

D. Wilson - Chairman
L. Duell
R. Demers

Others Present

Christopher Dunn – Realtor/Representative
Buddy Bedell - Contractor
Dana Coull
David Salvatore – Current CEO

Public Hearing opened 6:00 pm.

Pledge of Allegiance

Chairman Wilson opened the meeting at 6:05 pm.

Chairman Wilson stated that the Board needed to elect a Chairman. The term is for one year. Lyle nominated Chairman Wilson for Chairman for another year. Member Demers second the motion. The vote was taken. The motion carried. Chairman Wilson will serve as the Appeals Board Chairman for the fiscal year 2020-2021.

Chairman Wilson mentioned that Member Leuchs questioned why Members of the Board could not attend the meetings remotely. Chairman Wilson read a statement in to the record from the Maine Municipal Association, Appeals Board Manual, preliminary business page 33 which explains members cannot attend via video, telephone, e mail or other means.

Chairman Wilson opened the Public Hearing. Sylvia Danenhower, the applicant is not in attendance this evening, however, she has given notarized written permission for Christopher Dunn, her realtor permission to act on her behalf. The appeal being brought before the Board this evening is for a variance in regard to the property located on the corner of Gully Oven Road and Brianna Drive, Map R14 Lot 17-A.

Chair Wilson noted the absence of Members Leuchs, Bruce and Alternate Kathy Perry. With three members present, it was decided that there was a legal quorum and that the public hearing could continue.

The property does not meet the Lot Size Ordinance which requires buildable lots to be at least two (2) acres in size and have at least two-hundred (200) feet of road frontage.

Chairman Wilson stated that the applicant has the burden of proof and asked the applicant to present an explanation explaining as to why the applicant felt she should be granted a variance For a building permit.

Sylvia Danenhower would like to sell the property in question to Buddy Bedell and Christopher Dunn is the realtor. The lot is not considered a buildable lot according to the current Lot Size Ordinance (2017). The lot has been in the family for ninety (90) to one hundred (100) years and she had inherited it in 1994. Mr. Dunn then read through the application.

Chairman Wilson asked if there was anything information to offer. Mr. Bedell added that all other setbacks can be met.

Chairman Wilson asked the Board Members if they had any questions. Member Duell asked Mr. Dunn if they knew the date for the previous Lot Size Ordinance. Chairman Wilson stated that the Ordinance that would be applied would be the Ordinance which was in use at the time / date that property deed changed hands to Mrs. Danenhower's ownership.

Chairman Wilson asked Mr. Coull, who is in attendance as a member of the public if he had any questions, to which he replied that he did not.

Member Demers asked Mr. Bedell that he met all the other setbacks with the exception of the road frontage to which Mr. Bedell replied that the property did.

Jenn Griffin, who was acting as Interim Code Enforcement Officer for the Town of Lebanon at the time Mrs Danenhower's permit application was received, read a statement explaining that the building permit was denied for it did not meet the current Lot Size Ordinance (2017). Chairman Wilson asked Code Enforcement Officer David Salvatore if he had anything else to add, to which he replied that he did not. Chairman Wilson asked Mr. Salvatore for confirmation that wells need to be at least fifty (50) feet from all side lines and at least one hundred (100) feet from a leech field and if he was satisfied the drawing that was submitted with the application depicting the setbacks on the property. Mr. Salvatore replied that he does not see anything that needs to be changed.

Mr. Bedell offered that if the setbacks were in questions that he could have the surveyor go to the property and pin the setbacks for the Appeals Members to view. The house does meet the fifty (50) foot set back from both Gully Oven Road and Brianna Drive as well as the twenty-five (25) foot setbacks from all other sidelines.

Member Demers questioned for confirmation that the property meets all other setbacks with the exception the two hundred (200) feet of road frontage. Chairman Wilson stated that a condition that she felt important for the Board to consider, would be to have the access for the dwelling to be off of Brianna Drive which would only require a two (2) foot variance instead of having access off of Gully Oven Road which would require a thirty-five (35) foot variance.

Chairman Wilson asked if there were any questions. Member Duell asked if the leech field could be placed elsewhere on the lot if the original leech field failed. Mr. Bedell replied that the setbacks would still be met from the other properties and the well.

Mr. Dunn added that the site evaluator must determine at least two areas on the property which would accommodate an additional leech field if needed in the future. Mr. Dunn added that there is a shortage of housing and Mr. Bedell will be building an affordable home.

Chairman Wilson stated that if Mr. Bedell was building affordable homes or not does not have any bearing on the decision to be made.

Member Duell added that regardless of when the property was purchased or sold should not matter, it should be grandfathered as a buildable lot. Chairman Wilson asked Member Duell if he felt he could be objective in his vote according to the four (4) standards for variance due to his strong personal feelings on the subject. Member Duell stated that yes he could. Member Duell added that he feels that his issue is with the government taking peoples land.

Chairman Wilson asked for a motion to close the Public Hearing at 6:45 pm. Member Demers made the motion. Member Duell seconded the motion. The Vote was taken. (3-0-0) The motion carried.

Member Duell stated to Chairman Wilson that Land Ordinances are terrible. The law is not fair, not just. What right does the government have to take someone's land?

Chairman Wilson stated that the property was inherited from an Uncle and that it was not purchased with no due diligence. Member Demers stated that it was probably ok when the Uncle owned the land. Chairman Wilson noted that the land was deeded to Mrs. Danenhower's Uncle (B. Smith) in September 1985. After discussion with Land Use Clerk Jenn Griffin, it was shown that the Lot Size requirements had changed in June 1985 to require 2 acres.

Chairman Wilson stated that the Board will now go through the four (4) hardship criteria.

Chairman Wilson read the first hardship criteria: The land in question cannot yield a reasonable return unless a variance is granted.

Chairman Wilson states that Member Demers and Member Duell agreed that the property cannot yield a reasonable return. Chairman Wilson does not agree.

2 - In favor 1 – against

Chairman Wilson read the second hardship criteria: The need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood.

Chairman Wilson states that all Members in attendance are in agreement that this hardship criteria has been met. The variance is due to the unique circumstances of this particular property.

3 – In favor 0 – Against

Chairman reads the third hardship criteria: The granting of a variance would not alter the essential character of the locality.

Chairman Wilson states that all Members in attendance are in agreement this this hardship was criteria was met. The granting of a variance would not alter the essential character of the locality or the neighborhood

3 – In favor 0 - Against

Chairman reads the fourth hardship criteria: The hardship is not the result of an action taken by the applicant or a prior owner.

Chairman states that all Members in attendance are in agreement that that this hardship has been met, and the need for the variance was not the result of an action taken by Mrs. Danenhower or the previous owner, her Uncle.

3 – In favor 0 - Against

FINAL DECISION: VARIANCE GRANTED, MONDAY, June 29, 2020

Motion was made to grant the variance of Applicant Sylvia Danenhower, from the Town of Lebanon Maine Lot Size Ordinance 2017, Section 1, Lot Size, Subsection A. (3-0-0 In FAVOR of the Applicant) Motion Carried. Variance Granted WITH conditions as noted below.

CONDITIONS of VARIANCE:

- Permit will not be given until the Lebanon Code Enforcement Officer is satisfied that in the event the first proposed leech field fails, a secondary location for a replacement leech field is identified which will meet the legal required setbacks from the well and property borders.
- The driveway must be on Brianna Drive and the home address to be issued on Brianna Drive creating a road frontage of 198 feet. The driveway and access can not be placed from Gully Oven Road, which is a road frontage of only 165 feet.
- A variance of two (2) feet of road frontage is granted from the required two hundred (200) feet of road frontage on Brianna Drive.
- A variance of 1.29 acres is granted from the required two (2) acre lot minimum acre

Member Demers made the motion to allow the property located on the Lebanon, Maine Tax Map R14-17-A to be considered a buildable lot for the Appeals Board feels that this is a lot of record. Member Duell seconded the motion. The vote was taken. The motion carried.

In favor 3 – 0

Chairman Wilson explained the procedure to Christopher Dunn in regard to the Findings of Facts and Conclusions of Law, recording the document at the Registry of Deeds in Alfred Maine and returning the recorded document to the Lebanon Code Enforcement Office. Chair Wilson noted that no consideration would be given until the recorded Certificate of Variance had been returned to the Code Enforcement Officer.

Member Demers made the motion to adjourn at 7:10 pm. Member Duell seconded the motion. The vote was taken. (3-0-0) The motion carried.

