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Lebanon Maine Board of Appeals
September 22, 2020 Public Hearing Minutes
Gil Berube – 23 Paradise Row – Map R8, Lot 29-B

Members Present

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

Others Present

Gil Berube - Applicant
Karen Cudworth - Agent
David Salvatore - CEO

Public Hearing opened 6:05 pm.

Pledge of Allegiance

Chairman Wilson briefly outlined that this was a public hearing which was published in the newspaper. for a variance in regard to the required road setbacks noted in the Lot Size Ordinance not being met.

Member Bruce made the motion to open the meeting. Member Demers seconded the motion.

Chairman Wilson spoke of the Site Visit that took place prior to the Public Hearing.

Chairman Wilson reviewed the information on the appeals application which was submitted. Chairman Wilson confirmed with Mr. Berube that the lot in question is 3.87 acres and has been assigned the address of 23 Paradise Row. It had been claimed that the structure has been built to close to the road with the left corner of the structure measuring 42 feet back from the road and the right corner measuring 50 feet back from the road. The application states that the lot was measured by both the land owner and the Code Enforcement Officer (C.E.O.).

Mr. Berube made his appeal to the Board. He stated that it is hard to determine the proper setbacks from a dirt road because you cannot tell where the road ends and the lot begins. Chair Wilson asked Mr. Berube how long he had been a builder, to which Mr. Berube replied that he has been a builder for approximately 20 years.

Mr. Berube stated that this all started because there was a complaint from a neighbor that the foundation was too close to the road. The C.E.O visited the site and measured the property with Mr. Berube and that it was fine.

Chairman Wilson asked Mr. Berube when he and the C.E.O. measured the setbacks together if the 50-foot setback was met and if the foundation was in. Mr. Berube stated that when he and the C.E.O. took the measurements that the foundation, which was in met the 50-foot setback.

Chairman Wilson asked if the house was built at that time, to which Mr. Berube stated it was not built at the time, only the foundation was in.

Chairman Wilson asked Member Bruce if she had any questions. Member Bruce asked Mr. Berube what the wire was for that went from the property to another property located across the street. Mr. Berube stated that he was using the power from across the way. Member Bruce asked Mr. Berube if the wire would be removed once the house was complete to which Mr. Berube replied yes.

Chairman Wilson asked Member Demers if he had any questions. Member Demers asked Mr. Berube how far back is the other house. Mr. Berube replied that the other house is set back approximately 70 feet from the road. Member Demers asked Mr. Berube several times if The C.E.O. said it was alright, to which Mr. Berube stated that he did. Member Demers asked Mr. Berube if he built the house there because the C.E.O. said it was alright to which he replied yes.

Chairman Wilson asked Member Duell if he had any questions. Member Duell asked if Mr. Berube made it a habit to build where he did not know where the road is, to which Mr. Berube replied no. Member Duell asked if you didn't know where the road was why didn't you hire surveyors. Mr. Berube replied that he should have.

Member Duell then asked if the C.E.O. said it was okay. Mr. Berube replied yes. Member Duell asked Mr. Berube if the house was built. Mr. Berube stated that the foundation was in. Chairman Wilson asked if the house was built at that time, to which Mr. Berube stated it was not built at the time, only the foundation was in.

Chairman Wilson asked Karen Cudworth to identify herself. She did so as the Real Estate Agent representing Mr. Berube.

Chairman Wilson read the survey that was completed by the buyer's bank stating that the property was in a special hazard flood zone. There were notes on the survey, which were Ms. Cudworth's that stated "The setback is 8' short on the front left side from 50' setback. Codes needs to write a statement saying it's okay in order to close."

Chairman Wilson asked Karen Cudworth to identify herself. She did so as the Real Estate Agent representing Mr. Berube.

Chairman Wilson explained to Mr. Berube that this property is in a flood zone and that the house does not meet the required setbacks. Chairman Wilson also made clear that the reason Mr. Berube was issued a certificate of occupancy is due to the building being constructed properly. It was also made known that people are currently living in it.

Member Demers made the statement that it looks as though the house across the street is setback approximately 75 feet from the road. Member Demers then asked Mr. Berube if the house across the street was setback more than 50 feet from the road and if it is, move the road 8 feet to make the 50-foot setback required by the Town. Member Duell has seen this done before.

Chairman Wilson asked Mr. Berube if he knew that this was in a flood zone. Mr. Berube stated that he did not. Chairman Wilson read a letter from 2012 from the Planning Board stating that the property was in the 100-year flood plain as well as had shoreland zoning issues.

Information on the right of way and measurements were read from deeds. Mr. Berube was asked if he measured from the center of the road. Mr. Berube replied that he has no idea if he measured from the center of the road, it is a dirt road how can he tell. Ms. Cudworth began to speak. Chairman Wilson asked Mr. Berube if he approved Ms. Cudworth speaking on his behalf, to which he did. Chairman Wilson explained he needed to give permission to Ms. Cudworth because this was a legal proceeding. Ms. Cudworth concurred that it is difficult to determine what the middle of the road would be, how do you determine that. Chairman Wilson stated that a surveyor could make that determination. She also added that there were pins set on the property which would have been set by a surveyor.

Chairman Wilson read from an email from the Department of Environmental Protection that the resources for mapping online are a guideline/estimate of the areas and that a professional surveyor would need to access the property in order to verify any wetlands, flood zones, etc. that may be located on the property. Mr. Berube stated that they did this across the street. Chairman Wilson stated that this property should have been surveyed also. Mr. Berube said that the house sites on top of a hill and that it does not matter. It was reiterated that if there is any question that a property may fall within a flood zone or may have wetlands, that a professional survey should be conducted.

Code Enforcement Officer David Salvatore made his presentation. He explained that he could understand how it is difficult to measure from a dirt road. He had just issued a building permit to Mr. Berube. He had received a complaint from a neighbor that the foundation was approximately 2 -3 feet too close to the road. After work the C.E.O. went to the property with his tape measure and it was right around 50 feet. It was getting dark; he went back the next morning. They were backfilling the foundation and he asked him to stop for he had not inspected the footings or the foundation. Mr. Salvatore had the excavator call Mr. Berube to come to the property. Mr. Berube told Mr. Salvatore that he had called the Town Office and he did not hear back so he took pictures. Mr. Berube showed Mr. Salvatore his call log on his phone that he had called. Mr. Salvatore asked why Mr. Berube built this so close to the road and he and Mr. Berube measured it, but they could not get an exact measurement, he stated that it was close. Mr. Salvatore stated that Mr. Berube signed the waiver so he is responsible. The C.E.O. explained that because he is not a surveyor, applicants sign the waiver.

Mr. Salvatore went on to say that he was asked not too long ago to sign something about the septic and something about a variance that he could not sign. Mr. Salvatore asked the Land Use Clerk if she had anything to add. The Land Use Clerk went through the time line of when Mr. Berube first came to in regard to obtaining a building permit. It was explained to Mr. Berube several times by the Land Use Clerk that the property should be surveyed due to the wetlands on

the property. This was also explained to the C.E.O. and reiterated again to Mr. Berube by the C.E.O. prior to the actual application being submitted. Mr. Salvatore stated that he went to the property and did not see an issue because it was on a hill. Chairman Wilson replied that regardless if it is on a hill or not, it should have been surveyed.

Mr. Berube stated that they were here for the road setback, not the wetlands. Chairman Wilson stated that the property is within a flood zone and wetlands and due to that, it had could not be overlooked.

Prior to purchasing a piece of property, the realtor should have researched the property to make sure that it is buildable if you don't have a realtor then you should research the property. It is not the C.E.O. responsibility nor the Appeals Board responsibility to determine that for you. The realtor should have done due.

Mr. Salvatore asked is there a way to move past this flood plain and go back to the original matter at hand of the setback issue. Chairman Wilson stated that then they are looking at the additional 8 feet that the house should be setback form the road.

Member Bruce asked Mr. Salvatore when he was at the property measuring for his own knowledge, what were the measurements he came up with. Mr. Salvatore replied that he could not get an accurate measurement because he could not get the tape to hold to anything and because it was rocky. He added that it seemed close, but it was getting dark and was going to wait and go back the next morning. It was still hard to determine.

Chairman Wilson stated that Mr. Berube could adjust the lines which would subtract 8 feet from one lot and add the 8 feet to the other lot. New deeds would have to be drawn and submitted. She also reiterates that the D.E.P. recommends the delineated survey. Once the survey is complete, it will be submitted to the D.E.P. for review.

Mr. Berube stated that he had both lots surveyed. Ms. Cudworth told Mr. Berube that he needs to submit that survey to the Board.

Chairman Wilson informed Mr. Berube and Ms. Cudworth that the Appeals Board will be having a training the following Monday, September 28, 2020 at 5:00 pm. If the deeds and survey are complete by that time they can be brought before the Board at 4:45 pm she feels that this can be closed with out a finding because if you have the delineation survey, we can hold off on this until then.

Ms. Cudworth stated that the bank only wants to know that the town is not going to seek action against the new owners for the setback issue.

It was reiterated again that once the updated deeds and a professional survey has been submitted the Appeals Board can close this matter.

Member Bruce made the motion to table this matter with no finding until the requested paperwork has been submitted. Member Demers second the motion. The vote was taken. The motion carried.

Member Demers made the motion to close the Public Hearing. Member Bruce seconded the motion. The vote was taken. The motion carried.

Member Demers made the motion to adjourn the meeting. Member Duell seconded the motion. The vote was taken. The motion carried.

