

**Lebanon, Maine Board of Appeals
Minutes – Public Hearing
Monday March 12, 2018**

Members Present

D. Dorey-Wilson – Chair
B. LaBrecque Jr.
G. Getchell – Alternate

Others Present

Paul Philbrick - Resident
Rodney Furbush – Resident/Applicant
Anthony McDonough – Abutter
Joseph Siviski, Perkins-Thompson –
Abutter McDonough’s Attorney
Dana Coull – Observer
David Kallin – Town of Lebanon -Attorney
Richard Harlow III – Select Board Chair

Appeals Board members R. Demers and D. Leuchs are out of State and cannot attend the meeting. Member R. Varney sent notice to Chair D. Dorey-Wilson that he was unable to attend due to medical reasons.

In order to complete the quorum for the meeting, Chair D. Dorey-Wilson requested that alternate member G. Getchell be appointed as a voting member for this meeting, noting that G. Getchell did attend the site review.

Chair asked for objections from Board Members, Applicant, Public and Attorneys present. No objection noted.

B. LeBrecque Jr. made the motion to allow Alternate Getchell to sit in the spot of Member Varney, and Chair D. Dorey-Wilson seconded the motion and both members agreed. Motion Carried.

Chair D. Dorey-Wilson opened the Public Hearing at 6:00 pm with the Pledge of Allegiance.

Mr. Furbush first came before the Appeals Board regarding the construction of three decks on an existing structure located at 332 Sewell Shores Road, Map U22, Lot 8.

Mr. Furbush presented changes to the application, requesting changes to two decks from three decks.

G. Getchell made comment for the record that although he arrived at the site review prior to Wilson and LaBrecque, no discussion of the case or the property took place prior to the arrival of other Board Members.

Mr. Furbush was asked if he agreed, and he did agree with this comment.

At 6:10 PM, the Town of Lebanon attorney, David Kallin arrived.

Chair D. Dorey-Wilson asked for a motion to accept minutes of 3/9/18 Furbush Site Visit, with spelling corrections noted for the spelling of Member LaBrecque’s last name and the last name of Atty Siviski.

G. Getchell made the motion to accept the minutes as revised. B. LaBrecque second the motion. The vote carried.

Chair D. Dorey-Wilson read aloud the jurisdiction of the Lebanon Appeals Board to hear the variance appeal to Shoreland Zoning setback within the Town of Lebanon from the Town of Lebanon Board of Appeals Ordinance, Section 3, Duties and Powers.

Chair D. Dorey-Wilson stated that Mr. Furbush came before the Appeals Board to request hardship variance. Chair D. Dorey-Wilson then read the four standards the applicant must prove for the request to be granted by determination of the Town of Lebanon Board of Appeals Ordinance, Section 4, Variances, subsection 4.3.

Chair D. Dorey-Wilson then asked Mr. Furbush if he would like to address the Board to present his case.

Mr. Furbush approached the Board and explained that he began this project in April of 2017. During the construction of the decks, State Department of Environmental Protection Agent, Michael Morse, arrived to check permits. Lebanon Code Enforcement Officer James (Mike) Beaulieu was on scene and after a conversation with Morse, issued Furbush a verbal Stop Work Order. Mr. Furbush stated Mr. Beaulieu said that he had been mistaken and the decks were not included on the building permit that was previously issued. Mr. Furbush stated that the construction on the decks continued until Mr. Beaulieu returned from Lebanon Town Office with the physical Stop Work Order to 332 Sewell Shores Road, which was approximately one hour later. Within in that time there was significant progress on the building of the decks.

Mr. Furbush stated that if his requested variance not be approved, the removal of the decks would pose a financial hardship with a cost of \$40,000.00 for the remodeling and as well as another \$20,000.00 for materials. On the property there are large boulders, which without the decks, make the property unsafe. Mr. Furbush also stated that 95% of the camps on Sewell Shores Road are within the 25-foot setback from the water. He feels that the decks are in character with other homes. Another concern that Mr. Furbush mentioned is if something were to happen in an emergency situation, anyone who may be inside his camp structure would not be able to get out, although the slider doors would still be there.

Chair D. Dorey-Wilson asked Mr. Furbush if he was done with his presentation. Mr. Furbush stated that he was.

At 6:15 PM Chair D. Dorey-Wilson opened the meeting to the Appeals Board members and asked if either of the members had any questions that they would like to address regarding the information packets that they had received. G. Getchell inquired as to where applicant's statement of necessary 25-foot setback condition came from.

Mr. Furbush replied that the 25-foot setback condition came from the denial letter from the Planning Board.

G. Getchell commented that the Shoreland Zoning map takes precedence. By the map it looks as though half of the lot falls under the 100 Year Flood Zone and the other half in the Limited Residential District. In the Ordinance it stated that there is a 100-foot setback or a 250-foot setback depending on the District it is located in, nowhere does it state a 25 foot setback from Great Ponds or the Salmon Falls River. Getchell directed a question to Paul Philbrick. It was noted that Philbrick was attending as a resident, but also holds the Lebanon Planning Board Chair seat. Chair D. Dorey-Wilson noted that Philbrick was not required to answer the question. Dorey-Wilson asked Philbrick if he would like to answer, Philbrick indicated that he would. Answer was allowed and accepted into record.

Mr. Getchell was shown that the setback condition in question is in the Shoreland Zoning Ordinance under Section 12.C – Non-Conforming Lots by Paul Philbrick.

It was reiterated that appeal discussion is only in regard to the deck expansion project no other structure on the property applies to this hearing.

Chair D. Dorey-Wilson asked if there were any questions from members of the Public in attendance. There were no questions. Chair D. Dorey-Wilson stated that as required by law, the Lebanon Appeals Board had given the required 20-day notice of Public Hearing to the Maine Department of Environmental Protection (further mentioned as DEP).

Chair Dorey-Wilson then read aloud for the record, the document from Michael Morse, Department of Environmental Protection of the DEP's opinion and recommendation of the Appeal, The DEP document was dated with the current date of March 12, 2018. A copy of this can be requested through the Freedom of Access Act.

To officially accept the revision of changing the request to two decks from the three decks that were on the original application, G. Getchell made a motion to formally accept the change for the variance request from three decks to two decks. B. LaBrecque seconded the motion. The vote carried.

Chair D. Dorey-Wilson asked the Board members if they had any questions with regard to the DEP determination.

G. Getchell asked if the work was completed.

Mr. Furbush replied that both Mike Beaulieu, the previous Code Enforcement Officer with the guidance of Mike Morse from the DEP ordered the Stop Work Order at approximately 12 noon on September 18th, 2017.

Mr. Furbush reiterated that the denial of this variance request will result in a \$62,000.00 loss from the combination of the \$40,000.00 in the remodeling and \$20,000.00 in materials which will pose a significant financial hardship for him.

Chair D. Dorey-Wilson asked Select Board Chairman Richard Harlow and the Lebanon Town attorney David Kallin if they had any questions. Both replied that they did not at this time.

Mr. Furbush was also asked if he or his lawyer had any questions. Mr. Furbush did not have any questions and he stated that he did not have an attorney.

Mr. McDonough, and abutter to the property and his lawyer were asked if they had any questions. Neither had any at this time. Mr. McDonough also added that he did not purchase the property that abuts the Furbush property until after the Furbush project was started.

G. Getchell asked Mr. Furbush who delineated and staked the 25-foot high water line on the property. Mr. Furbush replied that he determined the waterline himself. The updated application shows that the variance request is for 20 feet, however previous applications differ, showing 18 and 19 foot distances from Northeast Pond high water mark. Chair Dorey-Wilson asked Mr. Furbush to state for the record, the actual distance in the variance he was seeking. Furbush stated for the record that he was seeking a variance to allow for a 20-foot setback. Chair D. Dorey-Wilson asked for a motion to change the information on the application to 20 feet, horizontal measurement from the proposed first floor deck. G. Getchell made the motion to clarify that the actual distance is 20 feet from the high water line. B. LaBrecque Jr. seconded the motion. The motion carried.

Chair D. Dorey Wilson asked for the motion to close the Public Hearing at 6:55 pm. B. LaBrecque made the motion to close the Public Hearing. G. Getchell seconded the motion. The motion carried.

Chair D. Dorey-Wilson reiterated that the applicant has to prove through four standards that there is a legitimate hardship in order for the variance to be approved. Each standard was read loud, discussed and voted upon by the Appeals Board members.

They are as follows:

- A. THAT THE LAND IN QUESTION CANNOT YIELD A REASONABLE RETURN UNLESS THE VARIANCE IS GRANTED.

Final vote on whether the applicant had carried his burden of proof on this element:

(3-0-0) Against

- B. THE NEED FOR A VARIANCE IS DUE TO THE UNIQUE CIRCUMSTANCES OF THE PROPERTY AND NOT TO THE GENERAL CONDITIONS OF THE NEIGHBORHOOD.

Final vote on whether the applicant had carried his burden of proof on this element:

(2-0-1) Against

- C. THE GRANTING OF A VARIANCE WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE LOCALITY.

Final vote on whether the applicant had carried his burden of proof on this element:

(3-0-0) For

- D. THE HARDSHIP IS NOT THE RESULT OF ACTION TAKEN BY THE APPELLANT OR A PRIOR OWNER.

Final vote on whether the applicant had carried his burden of proof on this element:

(3-0-0) Against

FINAL DECISION – DENIAL of VARIANCE

The Board concludes that because the applicant must prove that the variance will satisfy all four hardship criteria, and because the Board found that the burden of proof had not been met on three of the four requirements, that the requested variance must be denied.

Final vote: **(3-0-0) To Deny the Variance Request**

G. Getchell made the motion to adjourn the Meeting of the Lebanon Appeals Board at 7:38 PM.

B. LaBrecque seconded the motion. The vote carried.