

Lebanon Maine Board of Appeals

McGunagle Hearing Continued from 8/25/17

Setback Variance, 222 Sewell Shores Road, Lebanon

Motion to open meeting by Don Leuchs, second by Roland Demers, all in favor.

Meeting Opened at 5:30 pm

Chairman Wilson goes over meeting minutes of site visit of 8/21/17 and Public Hearing of 8/25/17

Discussion on Checklist which was created by Chairman Wilson on 8/26/17.

Chairman Wilson gives the McGunagles a copy of hardship rules. Notifies them that DEP states that their written narrative was not enough. Wilson offers to allow the McGunagles to answer the hardship questions during the meeting.

Member Don Leuchs states that the McGunagles were to fill out the hardship questions.

McGunagles stated they had been waiting for the checklist.

McGunagles state that Code Enforcement Officer told them they could submit a narrative rather than answering the hardship questions.

Member Leuchs discusses with the McGunagles with regards to Shoreland Zoning hardship applications.

McGunagles question if answering the questions is the only way to get a variance.

Member Leuchs discusses with the McGunagles the hardship variance and the disability variance.

Chairman Wilson speaks on notification of DEP and 20 day notification prior to Public Hearing and the DEP recommendation from Mike Morse is read into record.

DEP recommends that the Appeals Board does not grant the variance in the McGunagle case, stating that the owners already have a reasonable use of the property and that they feel the addition would be a "convenience" rather than a hardship necessity.

Mrs. McGunagle questions owning the property for 4 years as stated in DEP letter. Mrs. McGunagle states that they have owned the property for over 20 years.

Member Leuchs discusses transfer of ownership to the McGunagles from family members as "purchase of property".

Chairman Wilson asks Board Members if they have any questions.

Member Demers asks why the McGunagles were denied their original building permit. Chairman Wilson answers that the Code Enforcement Officer, Mike Beaulieu, who is not present for this hearing, denied the Building Permit Application for being unable to meet side setback rules. Needed 25 feet, and after addition this property will be 15 feet from the side property border.

Mr. McGunagle states that Cameron Adams approved his project through DEP, and that he had sent the Board his Permit by Rule last week. Chairman Wilson states she does not know how Cameron Adams approved their project while they were currently involved in local Appeals Board hearings. Chairman Wilson states that she only got the Permit by Rule prior to the meeting. Wilson asks who Cameron Adams is. Mrs. McGunagle states that Wilson gave her Cameron Adams' name during the 8/25/17. Wilson contends that perhaps the CEO gave the McGunagles Cameron Adams name, it would not have been her.

Mrs. McGunagle states that Cameron Adams is the Field Service Enforcement of DEP, with the Shoreland Zoning Dept. The McGunagles state that they sent the application, \$75, and a scale site drawing and that Adams had not provided them with a copy of his Permit by Rule, stating that DEP would send a copy to the town of Lebanon. Appeals Board members turn to their Appeals Board Manuals to look for direction on how to follow a Permit by Rule designation by the DEP.

Member Bernie LaBrequette asks who sent the Permit by Rule to the Appeals Board. The McGunagles answer that Cameron Adams would have sent it to the Board to show the project was approved.

Member Demers reads from the permit. Regarding the McGunagles

Mr. McGunagle shares an e mail from Cameron Adams on his cell phone. The e mail is read into the record as follows:

"Hi George, I approved your Permit by Rule application on 9/13/17. We do not issue anything for approvals, but we do notify the town of the acceptance for their record."

Wilson questions the odd wording of the DEP message. The McGunagles contend that their project was approved by Cameron Adams of DEP.

Select Board Chairman Chip Harlow offers help.

Chairman questions the Board members to accept input from the Select Board Chairman, all agree.

Chairman Harlow states that he is also new at these issues, however, he ran across another instance earlier this week where Permit by Rule was applied incorrectly. Harlow questions whether they were directed by Code Enforcement Officer to apply for project approval under DEP Permit by Rule.

Mr. McGunagle states that they learned about Permit by Rule during the 8/25/17 Board of Appeals hearing.

Chairman Harlow reads from the State DEP website regarding Permit by Rule. New construction is not contained within that language. Harlow goes on to say that the DEP representative is not catching Shoreland Zoning issues. Continuing on Harlow states that there have been some kind of miscommunication with regards to Permit by Rule. Harlow states that there is a confusion at DEP where Adams would be approving a Permit by Rule and Morse would be recommending the Board to deny the variance application. Harlow states that the confusion seems to be at the DEP end.

Discussion on the Permit by Rule given to the McGunagles. Mr. McGunagle states that the DEP Field Officer went by the criteria that was given to them by the McGunagles. He continues to say that his project is benign, with little to no environmental impact.

Harlow states that he does not know what criteria the DEP goes by in order to give a Permit by Rule.

Chairman Wilson asks why the McGunagles would apply to DEP 5 days after their Appeals Board hearing when it had been made clear that their appeals hearing would be continued.

Mrs. McGunagle states that the Lebanon Appeals Board directed them to apply for the Permit by Rule. Chairman Wilson states that the Board did not discuss Permit by Rule, and Mrs. McGunagle states she was told during the meeting to apply for the Permit by Rule. Wilson states that she will review the 8/25/17 meeting video. Wilson asks where the couple go the application for Permit by Rule. Mrs. McGunagle states she e mailed Mike (CEO) for the application, but then states that she e mailed Cameron Adams for the application.

Member Demers states that the DEP and town have different rules and permits required for building on a non-conforming lot. Demers asks if the couple paid for the permit by rule, Mrs. McGunagle states they paid \$75 for the permit.

Mrs. McGunagle asks if people can build on an empty piece of land. She states she is confused by the process.

Chairman Wilson states that building can be done on a non-conforming lot, but that if they do not meet setback requirements under Shoreland Zoning, they would still have to come to the Appeals Board, and Wilson states that if the McGunagles don't want to accept the Appeals Board decision, it is their right to appeal to Superior Court in Alfred Maine.

Member Leuchs states that the Board will have to find out the difference between a variance and a Permit by Rule prior to the Board providing a logical decision. Member Leuchs discusses with the couple regarding building upward rather than sideways, stating that he believes that if they went upward, it would not change the footprint of the existing structure. McGunagles answer that building upward is not possible due to the manner of construction of the original building.

Member Demers states that they can't always go up either. Chairman Wilson states to her understanding that the "footprint" would not be changed by the McGunagles building upward. Members Varney and Leuchs discuss that the "footprint" also considers volume and not only land mass changes.

Select Board Chairman Chip Harlow discusses with the McGunagles, building on a vacant lot, and how that is accomplished. Discussion is continued with regards to appropriate value. Harlow states that he will personally look into this issue by calling DEP himself in the morning to find out about Permit by Rule. Harlow questions "If a Permit by Rule is allowed, is that then a Shoreland Zoning issue?" Harlow questions this being a mistake at DEP.

Mrs. McGunagle questions if the permit isn't for Shoreland Zoning. Chairman Wilson states the Permit itself states that it is Natural Resources Protection, not Shoreland Zoning.

Harlow also questions whether an Permit by Rule trumps the Shoreland Zoning.

Member Demers reads directly from the permit, stating that the Permit by Rule does not negate the need for local permits.

Chairman Wilson states that perhaps the permit is for being too close to the stream that is located on the property.

Chairman Wilson states that this is the McGunagles 2nd hearing, Chairman hesitates to continue to ask the McGunagles to come back for another hearing. Wilson states that she is comfortable closing the hearing, looking into the Permit by Rule, reserving the Board of Appeals vote until a further discussion can be had with DEP. Wilson suggests the Board take their remaining 7 days to hear back from DEP and opens that conversation to the Board.

Member Leuchs states the Board also has to decide whether the McGunagles will be allowed to have a variance for a 25 foot setback.

Member LaBrequé questions how Appeals Board can allow some people can be allowed, and others are not, expressly mentioning the 9/18/17 Cavallaro hearing.

Chairman Wilson advises that the projects are different, the property was much larger, and the project was much different.

Member Leuchs also speaks to Mr. LaBrequé regarding the difference is the projects.

Member Demers asks what the abutters think of the property. Mrs. McGunagle states that the neighbors have no problem with the project. Chairman Wilson states that the Board only heard from one abutter, Mr. Thurber, but not the other on the affected side of the property.

Chairman asks Mr. Varney if he will agree to waiting for DEP determination on Permit by Rule. Mr. Varney states that he finds the whole thing is very confusing. The Permit by Rule says one thing, and the letter from DEP Mike Morse says another.

McGunagles ask for copies of the checklist, and for the Permit by Rule paperwork delivered to the Town of Lebanon with regards to their property on Sewell Shores Road.

Discussion on the houses in question being on a Private Road, rather than a Town maintained road.
Discussion on the property still being within the town and subject to Shoreland Zoning.

Mr. Varney questions the property being on a private road, does the town still have the right to maintain a 50 foot setback from the roadway. Chairman Wilson answers that they have to conform to all building codes. A private road is still a road. Member Varney continues to question whether the 50 foot setback from a roadway would still hold true for a private road.

Discussion on 7 day period prior to a decision being made. McGunagles question if this is their last say on the matter.

Chairman asks the McGunagles if they have anything further to add with regards to their project. Mrs. McGunagle states that they do not.

Chairman Wilson discusses when the Board will meet to make their decision, reminding the Board that the decision is due within 7 days. (Tuesday, September 26). Board decides to meet on Saturday,

September 23, 2017 at 11 am at the Town Office to hear the determination of Permit by Rule and to make a final decision with regards to the McGunagle variance.

Chairman thanks the McGunagles for their patience in the Board and for learning the process along with the Board.

Public Hearing is closed.

Chairman Wilson discusses the possibility of having Mike Morse from DEP or Jay Lee Feldman from Southern Maine Regional Planning Commission to come and teach the Appeals Board with regards to Shoreland Zoning and permitting needs. Wilson states that the former Chairman, Bettie Harris Howard, had added some money to the Board's training budget, Wilson states that she would like to have someone come to the Town Office. Requesting the advice of the Board. All state that they would agree to that training.

Discussion on permitting, who rules, state or town. Discussion by Chairman with regards to the town needing to make laws that are stricter than state rule. Discussion on hardship requirement.

Additional discussion with Select Board Chairman Chip Harlow with regards to Permit by Rule. Chairman Wilson states she does not understand why the McGunagles were sent to the State for Permit by Rule after their permitting process for a variance had already begun.

Discussion on many variances that may need to be granted for this single addition.

Discussion by Mr. Demers with regards to allowing the variance that anyone should be able to put their addition on for their grandchildren.

Discussion by Member Leuchs with regards to sheds on every property in Sewell Shores having sheds right on the property lines.

Discussion by Member Demers that he believes that sheds are still allowed anywhere on any property. Demers states that former CEO Mike Badger told him that a 10 X 10 shed can be put anywhere on the property. Discussion on a Sewell Shores resident that replaced a truck body with a shed.

Discussion with Chairman Chip Harlow with regards to former town building code and adoption of MUBEC building codes in 2009.

Discussion by Member Varney that the Town Office was built illegally due to the lack of sprinkler system.

Member Leuchs motions to adjourn the meeting, seconded by Member Demers

Meeting adjourned 6:40 pm

