

Lebanon Maine Board of Appeals

Public Hearing, Monday October 22, 2018, 6:00 pm

Lot Size Variance – Timothy Spaulding – Emmons Lane – Map R11, Lot 13

**Motion to open meeting** – Member Bernard LaBreque. Second by Member Don Leuchs. **All in favor.**  
**Meeting Opened 6:00 pm.**

Pledge of Allegiance

Code Enforcement Officer Steve McDonough enters the meeting.

Chairman Wilson introduces Applicant Timothy Spaulding. Land Owner.

Chairman reads Appeals Board authority to hear the Lot Size Ordinance 2017 Variance request.

Chairman introduces new Appeals Board Member Lyle Duell - Appointed on Thursday October 18, 2018.  
Sworn in on Friday October 19, 2018.

Chairman introduces Appeals Board Members and sets Meeting Agenda.

Chairman Wilson asks Timothy Spaulding to state his case for variance.

Timothy Spaulding states that he purchased the lot on Emmons Lane believing that the 1.93 acre lot, a little under 2 acres, was grandfathered from the Lot Size Ordinance 2017, as it was already a separate lot from the original owner's lot.

Member Don Leuchs questions Applicant Spaulding on how the lot was created and additional property still owned by the original owner Marilyn Emmons. The lot in question is not contiguous with the rest of the original owner's property.

Discussion is held that lots on Emmons Lane drew up the plans for lots in the 1970s and began selling the lots in 1988. This lot was the last lot to be sold. Discussion is that the original owner, Discussion by Applicant is that Marilyn Emmons thought the lot was grandfathered, but recently found out that it was not grandfathered due to the fact that the previous owner had not created an official subdivision, selling a single lot every 5 – 10 years.

Member Lyle Duell asks if the prior owner Marilyn Emmons was paying taxes on the property. Applicant states that she was.

Member Leuchs asks Applicant what it means to them when they discuss the lots being portioned off.

Applicant states that a portion of the land was being sold every 5 or so years, so that she was not required by law to create an official subdivision.

Chairman discusses necessity for creating a subdivision plan with Planning Board if you are dividing a piece of land into 3 lots or more.

Member Leuchs questions how the lots were created all just under 2 acres.

Discussion of lot sizes all under 2 acres on Emmons Lane, Lebanon Maine. All lots are slightly under 2 acres. (1.93 acres, 1.91 acres) \*8 lots\*.

Applicant states that another lot on Emmons Lane sold in 2006 at 1.92 acres and the owners were given a building permit without any question.

Discussion by Code Enforcement Officer with regard to grandfathering. In order to be grandfathered, lots must be a pre-existing lot of record in 1973.

Code Enforcement Officer states that this parcel, Map R11, Lot 13 has only recently been created as a lot in 2018.

Member Roland Demers establishes that when the lot was created, it was created as an illegal lot as it was less than 2 acres.

Chairman Questions whether Mr. Emmons would be joining the meeting. Applicant states that he will not be joining the meeting.

Discussion with Member Demers and Member Leuchs with regard to the shortage of square footage. 3,120 Square Feet short, according to Member Leuchs.

Chairman Wilson discusses Mr. Emmons coming in to speak with Selectmen recently. Chairman questions discussion with regard to where the pins were placed to measure 2 acres of property.

Applicant discusses that Emmons Lane is a private road, the road is commonly owned. Applicant states that residents don't pay taxes on the road property.

Member Leuchs recalls conversation in a recent Land Use Workshop with the Board of Selectmen, that private roads are still considered roads and property borders can not use common roadway as part of their property total acreage.

Chairman Wilson questions whether Code Enforcement Officer found that the property in question actually began at the stone wall that borders Emmons Lane on that lot. Discussion is held on description of lot by their own warranty deed.

Discussion that the actual measurements of the property are still less than 1.93 acres. The issue is not a setback issue. The issue is that the lot is undersized.

Member Bernard LaBrequette questions whether there has been a survey done on the property. Chairman Wilson states that she has asked and the property is unsurveyed.

Member Don Leuchs discusses that it is not necessary to have property surveyed in order to sell it.

Member Lyle Duell questions whether the Applicants have attempted to return to the prior owner to see if they can purchase enough additional land to create a 2 acre parcel. Applicants say they have discussed this with the Emmons' and that there is no other abutting land available to purchase to create a 2 acre lot.

Chairman Wilson reads the last paragraph of the warranty deed, Questioning the wording of the land being a portion of the original property. Member Leuchs explains the wording. The lot was created on June 13, 2018.

Member Demers restates Chairman's question with regard to when the original division of the lots was decided.

Chairman questions the Applicant to when the lot was created on paper. Applicant offers the prior landowner's hand drawn map of the property of Emmons Lane, and the original drawings of the prior owner, delineating the lots.

Member Demers shares a memory of an "Air Mail" mailbox which used to be at the end of Emmons Lane.

Member Don Leuchs defines and clarifies for the video that the engineers plan included in the Appeals packet is created for purpose of septic installation.

Member Duell states that the septic plan is created by septic installers and is not a survey.

Member Demers questions what the Appeals Board is deciding in this hearing. Chairman Wilson answers that the Board is deciding whether or not to grant a variance for the Applicants to build their proposed house.

Member Demers questions what would happen if the Board found that the Applicants could not build. Chairman Wilson states that if the Board found they could not build then they could not build.

Member Demers questions what the applicants would do with the property if the Board found they could not build. He asks if the Applicant could get their money back. Chairman Wilson states that what would happen next would be up to the Applicant.

Member Leuchs asks who owns the large parcel of land behind the lot. Applicant states that it is owned by Parsons. Leuchs asks if perhaps the Applicant can approach Parsons to see if they could purchase 10 feet. Applicant states that the prior owner stated they did not think that a land purchase from Parsons was an option.

Member Duell discusses that the deed is a warranty deed, so the people who sold it guaranteed that the lot was good. Member Demers argues that the warranty deed only warrants that the lot is 1.93 acres. It does not say on the deed that the lot is a buildable lot.

Member Demers states that when the lot was cut up, there wasn't a law saying 2 acres.

Chairman Wilson states that the Road Maintenance Agreement for the property was created in 2006.

Member Duell states that there is no deed stating that this lot was in existence in order to be considered for grandfathering. Demers disagrees, stating that it was cut out. The lot only existed in someone's mind. Not legally. It's not a legal lot. It never was.

Chairman Wilson directs the meeting to Code Enforcement Officer Steve McDonough.

CEO states that his only statement is to remind the Board is not hearing an Administrative Appeal, they are hearing a Variance Appeal. The Applicants are not disputing the acreage. They are attempting to meet the 4 criteria to receive a variance.

Chairman Wilson and Member Demers agree.

Members view the hand drawn map as provided by the Applicant and it is noted that the map was registered with the Alfred Registry of Deeds in 2006.

Chairman Wilson discusses that anything can be registered with the Registry of Deeds, but that doesn't make it a legal lot division. Wilson notes that the map was registered at the same time as the Road Maintenance Agreement was drafted in 2006. Chairman states that it looks as though there was every intention of separating the lot, but the lot was never actually created. It was only created on the hand drawn map by the Applicant.

Applicant provides a list of all the abutters with their signatures to the Chairman.

Discussion between Member Leuchs and Applicant while examining tax map, that the lot was never given a separate number. There are several small lots still part of the Emmons property and connected on the tax map by arrows. The small arrows show that the lots were still linked to the original owner.

Member Duell mentions that he would like to move toward the hardship criteria.

Chairman Wilson acknowledges the receipt of the Abutters list with signatures.

**Motion by Member Leuchs to end the Public Hearing.** Second by Member Demers. All in favor. **Public Hearing ended at 6:30 pm.**

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

Member Demers states he feels the Applicant meets this criteria. Without being able to build the land is useless to them. Demers states he feels that when the applicants bought this, they were probably told that the lot was 2 acres more or less.

Chairman Wilson states that we don't know what they were told.

Chairman Wilson reads from "Variances: Maine's Undue Hardship Text Explained" by Andrew Hill Legal LLC, September 2017, with regard to direction with regard to this criteria.

Discussion with regard to prices of a buildable lot vs the prices for a non-buildable lot.

Member Leuchs questions CEO McDonough on whether anything at all can be built on this lot. CEO McDonough reads from the Lot Size Ordinance.

Chairman Wilson questions the Applicant on how much they paid for this lot. Applicant answers \$30,000.

Member Leuchs states that he feels that the Applicant cannot realize a reasonable return on their investment. Members LaBreque, Demers and Duell agree. Chairman agrees.

**Chairman states that all 5 members are in agreement that the Applicant meets the burden of proof for the first criteria. The lot cannot yield a reasonable return on their investment unless a variance is granted.**

**Chairman Wilson reads 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.**

Discussion with regard to when and how the lots were created and that all the lots in the neighborhood were created too small.

Member Demers states that the 2 acre lot size requirement was not in effect when the lots were planned. Chairman Wilson questions CEO McDonough who states that the last amendment to the Lot Size ordinance was in 1987, and then offers that the information is irrelevant because the Board is not hearing an Administrative Appeal.

Applicant raises her hand and Member Demers advises her that she cannot be heard because the Public Hearing has been closed.

Member Leuchs states that he thinks the Applicant has met the burden of proof on the second criteria.

Chairman states she feels this is a unique circumstance of the neighborhood. The last home on the road was built in 2006, Lot 13F. Chairman states that the Board cannot consider this a lot of record as it was not created until 2018.

Member LaBreque states that the people who own the lot now should have done their homework. Chairman agrees stating that the Board hears this repeatedly. Member LaBreque states the buyer should beware. LaBreque abstains from a decision on this criteria.

Member Demers agrees the Applicant has met the burden of proof.

Member Duell agrees the Applicant has met the burden of proof.

Chairman abstains from this hardship.

**Chairman states that 3 members are in agreement that the Applicant has met the burden of proof on the second criteria. 2 abstained.**

Applicant speaks that he has a letter from Code Enforcement Officer stating that 13F is a buildable lot. Applicant had asked about 13F in error due to the tax maps at Town Office were incorrect when he came in to view them.

Chairman Wilson reads into the record the letter regarding Lot 13F from the Code Enforcement Officer.

Member Leuchs states that 13F is not their lot.

Applicant re-states that the Town's tax maps were labeled incorrectly.

Chairman questions the tax maps being wrong. Applicant again states again that the tax map was labeled incorrectly.

Discussion on the mix up between lots and exactly which lot the Board is considering for variance.

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

Member LaBreque agrees that the Applicant has met the burden of proof for the second criteria.

Member Duell abstains from decision on this hardship criteria.

Member Demers agrees the Applicant has met the burden of proof.

Member Leuchs agrees the Applicant has met the burden of proof on this criteria.

Chairman Wilson agrees that the Applicant has met the burden of proof on this criteria.

**Chairman states that all 5 members are in agreement that the Applicant has met the burden of proof on the third hardship criteria.**

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

Member Leuchs states he believes that the hardship was caused by the prior owner.

Member Demers agrees that the prior owner created the hardship by creating the lots less than 2 acres.

Chairman reminds Demers that in order to grant the variance, the Board would have to find that the hardship was not the action of the applicant or a prior owner.

Member Leuchs states it was.

Member Demers argues that the applicant has already met three criteria.

Chairman Wilson reads from the Board of Appeals Ordinance: The Board shall not grant an variance unless it finds that strict application of the ordinance to the appellant and the appellant's property would cause undue hardship. "Undue Hardship" will be found only when all of the following criteria are met.

Member Leuchs reiterates that all four criteria must be met.

Member Demers states that the applicant does not have to meet all four criteria.

Chairman Wilson states that she just read the law to Member Demers.

Member Demers states that he does not interpret the law in the same way. He does not agree with it.

Member Leuchs explains the law to Member Demers.

Member Demers states that the prior owner did not cause the hardship because they sold it as a legal lot. Chairman states that when the lot was sold in June 2018, it was not a legal lot. Demers states that it was a legal lot to them. Demers believes that you can't blame the prior owner or current owner for doing what they believed was right.

Chairman discusses hearing Mr. Emmons discussing in a previous Board of Selectmen's meeting that he had come to planning board and due to the fact that the road was a private road and common area, that the ownership would be considered to the center of the road. Wilson states that Chairman Harlow checked on the calculator and found that if, indeed they could use the common area of the road, the lots would be 2 acres or greater.

Member Leuchs discusses that in 2017 the Lot Size Ordinance clearly states that a private road is to be considered as any other road and the lot begins at the edge of the road right of way. Discussion continues with regard to when the lot plan was registered.

Chairman states the lots were laid out in 2006. Member Leuchs questions what exactly the map was that was registered with the Registry of Deeds. Chairman Wilson and Member Leuchs continue to question exactly what they are viewing.

Member Duell states that if there has never been a surveyor the Board doesn't even know if the road is placed as it is drawn. Member Duell thinks that this sketched map is a can of worms.

Chairman questions whether the other lots on the road have been surveyed.

Member Leuchs questions any identifiers or stamps on the hand sketched map. Chairman states that there are clearly marked roads and property owners. But there is nothing else to state what the map pertains to.

Member Duell questions whether people have even been building on other people's lots and discusses other places in town where this has been a problem. People with no experience dividing up lots.

Chairman states that the roads on the map are depicted as being straight and the Board had traveled to the site that afternoon and knows that those roads are not straight.

Chairman states that she will have difficulty writing fact and finding on the case. Chairman rereads the fourth hardship criteria. Chairman states that she has to find that the prior owner caused this hardship but she questions whether this was an accepted practice at the time.

Member Demers states that the hardship is caused by the prior owner. He finds that the applicant can meet this criteria as he doesn't think that the prior owner did this intentionally and he feels that it was legal when he did this.

Member Duell states that ignorance is not an excuse for breaking the law.

Chairman states that this lot was not created until this year.

Member Demers states he feels that the Applicants meet this and all the criteria for the variance.

Member Leuchs disagrees. The applicant does not meet this criteria.

Member LaBreque states that he abstains on this decision.

Member Duell states that he feels that the responsibility is on the seller and he believes the Applicant needs to get a lawyer. He does not believe that the Board should not blanketly excuse ignorance.

Member Demers states that he does not feel that granting this variance would be excusing ignorance.

Chairman reads into evidence a letter of approval for the variance signed by all abutters as well as the former property owners. Chairman checks the names with the registered abutters list. Chairman states that all the listed abutters have signed the letter.

Chairman Wilson recaps hardship discussions.

Chairman states that her vote on hardship number four is that the applicant can not meet this hardship criteria. Wilson states that in light of all that was heard, she agrees that she feels that this was not created purposefully and it was done out of ignorance. She encourages the applicants into looking into further appeal.

Chairman moves for final vote: To approve the variance for building a 28X44 ranch house as long as it meets all other setback requirements for Emmons Lane, Map R11, Lot 13.

Member Demers: Approve

Member Leuchs: Deny

Member LaBreque: Approve. Reason given, that the lot has not been measured out by a licensed surveyor and he believes that the property to the middle of the road counts.

Member Duell: Asks to abstain. Chairman Wilson states that he can abstain, but she would rather he did not.

Member Leuchs states that if Member Duell finds that the Applicants did not meet even one of the criteria he must vote to deny.

Chairman Wilson: Deny. Chairman feels that there has to be a line that needs to be met on how much longer the town allows these poor lots to be sold to unsuspecting buyers with no recourse going back on the sellers.

Member Demers states that he doesn't understand how there can be any recourse on someone that sold a lot. Discussion follows.

Chairman states she has a problem with the fact that buyers are coming into Lebanon and being sold junk.

Demers states that he feels that the Board is not doing their homework by not allowing these people to build on this lot.

Chairman states that there is no evidence that the plan to utilize the common area of the road as part of the 2 acres.

Demers argues that the property is a private road and everything surrounding it is private. Demers states the lots were made to be sold the way they are.

Member Leuchs reminds Demers that no matter where the lot is, the measurements indicate that the lot is 1.93 acres and does not meet the 2 acre requirement.

Member LaBreque questions Code Enforcement Officer on how many illegal lots are there in Lebanon.

Member Demers argues further.

Member Duell questions whether the Applicant can return to the Appeals Board to try for another variance. Chairman Wilson states that they cannot.



Discussion with regard to an upcoming question on the ballot which would allow for the Appeals Board to allow for a 20% discrepancy in the law.

Discussion the possibility of tabling the discussion until further discussion on the 20% rule and whether it will be on the ballot in November 2018 or June 2019.

Member Duell questions whether or not the Applicant meets the letter of the law.

Member Demers states that they do. Member Duell disagrees.

Chairman states that she cannot find it in her conscience to find for the applicant with regard to the fourth criteria.

Member Duell questions whether the applicant feels they have exhausted all remedies for getting their money back for the lot. Applicant states that they do not want to take the 90 year old female prior owner to court.

Code Enforcement Officer speaks aside to Member Duell. Chairman questions what was said. Code Enforcement Officer states that while he finds all the discussion to be heartbreaking, he does not feel that it is relevant.

Member Demers agrees. Member Demers states that the Applicant met all the criteria.

Chairman states that the majority of this Appeals Board did not find that they had met the fourth criteria.

Chairman states her vote is to Deny.

Member Duell states that he is not heartless and he feels for the applicant but he signed a paper stating that he would abide by the state requirements.

Member Demers questions Member Duell as to this agreement or disagreement with the law.

Chairman states that the Board is not going to argue. That the Board voted 3-2 to Deny and Member Duell voted within what he felt was the law.

**Final Decision: Denial of Variance. (3 Deny – 2 Approve)**

Chairman addresses the Applicants with regard to denial of the variance. Chairman outlines the applicant's rights to reconsideration by the Board or to Superior Court in Alfred Maine.

**Motion to close the meeting by Member Leuchs. Second by Member Demers. All in Favor. Meeting closed at 7:20 pm.**