

*Deborah Wilson*  
*Lyle Duell*

**Lebanon Maine Board of Appeals  
Public Hearing Minutes  
Monday, March 11, 2019 @ 6:00 pm  
Donald Meader – 405 Little River Road – Map R2, Lot 54**

**Members Present**

D. Wilson - Chairman  
Lyle Duell - Member  
Michael Parker Alternate

**Others Present**

Kurt Osgood – Maine Accessibility – Rep. Mr. Meader  
Terry Swain – Alpha One – Rep. Mr. Meader  
Paul Philbrick – Selectman  
Bill Lane – Lebanon Resident  
Mary Lane – Lebanon Resident  
Deborah Dorey Wilson – Appeals Board Chair  
Lyle Duell – Appeals Board member  
Michael Parker – Appeals Board member  
Steve McDonough – Code Enforcement Officer

**Public Hearing opened 6:00 pm.**

Pledge of Allegiance

Chairman Wilson introduces the members of the Appeals Board. There is not a quorum for voting purposes. **The Chair uses her authority to appoint Alternate Member Parker as a full voting member for this Public Hearing.**

Chairman Wilson reads the Appeals Board authority to hear this Appeal.

Chairman Wilson stated that Selectboard Chairman Philbrick would like to speak. Selectboard Chair Philbrick apologized to Parker for the miscommunication that took place at the Selectboard meeting which took place on Thursday, March 7, 2019.

Chairman Wilson stated that she expects that the Selectboard will be appointing Parker as a full voting member at their next scheduled meeting.

**Kurt Osgood from Maine Accessibility and Terry Swain from Alpha One were present to represent Mr. Meader in this appeal. Mr. Meader was not present at this hearing.**

Chairman Wilson stated that Mr. Osgood is from Maine Accessibility and asked what his part in this project is. Mr. Osgood explained that he installs various ramps.

Mr. Osgood present to the board the proposed ramp and landing and explained the construction of the structure. The ramp will be made of pressure treated lumber and will end with a “landing” which will be halfway on the driveway and halfway in the lawn. The lawn will be dug out so that the “landing” will be level.

Chairman Wilson asked approximately how many ramps are installed in a years' time. Mr. Osgood replied that the wooden ramps are fairly new, however 20-30 aluminum ramps have been installed within the past year.

*approved 6/10/2019*

Chairman Wilson asked Appeals members Duell and Parker if they have any questions at this time. They replied that they do not.

Terry Swain is a representative from Alpha One who is involved in the project. Alpha One is a Disability Company one of the services that they offer is critical access ramps. Alpha One is based out of Augusta and offers assistance to those who need ramps to access their homes. They receive grants from HUD to install ramps for low income families. They have assisted in approximately 7 ramps in Cumberland County. If this appeal for a variance is granted this will be the second ramp that has been installed in York County. The other ramp is located in Eliot.

These are wooden ramps that when the ramp is no longer needed, someone will come to dismantle and remove the ramp so that someone else can use it.

Chairman Wilson stated that there would be conditions that the structure be removed when no longer needed. Chairman Wilson asked when the structure is dismantled and removed, will the landing also be removed and the deck and stairs to the entrance to the home be replaced by the company, comparable to the one that exists at the time of the March 11, 2019, 4 pm site visit.

**Terry Swain states that Alpha One will restore a similar deck and stairs for access to the home at such time as the ramp is no longer necessary.**

Chairman Wilson confirmed with the Code Enforcement Officer that a building permit would need to be obtained prior to the reconstruction of the stairs, to which the COE McDonough replied that yes, a permit would need to be obtained.

Chairman Wilson asked Appeals members Duell and Parker if they had any questions at this time. Both replied that they do not.

Chairman Wilson asked the COE McDonough the reason for the denial of the building permit. It was briefly explained that there is a required fifty (50) foot setback for any structure from the road right of way. This structure would only be five (5) feet from the road right of way. Twelve (12) feet from the edge of the current paved road.

Chairman Wilson read the denial letter from the Code Enforcement Officer into the record.

Chairman Wilson asked the question does the house meet the required setback of fifty (50) feet from the road.

Duell stated that according to the plot plan that was submitted, it does not for it is located thirty-five (35) feet from the road.

Chairman Wilson asked the COE McDonough if the only issue is with the setback or is there an issue with the construction as well. COE McDonough replied that he had not seen the specifications for this project.

Chair Wilson states she went to the property address during the time of the published site visit, prior to the public hearing. There was not a quorum of the board present on site to establish a meeting. Chair Wilson explains that during the site visit, there were no questions allowed by the applicants, and the only information gathered was that Chair Wilson took pictures of the property and the proposed area which the ramp would be constructed. The pictures were explained one by one by Chair Wilson to the other Board Members as to what they represented. Each Appeals Board Member and the CEO McDonough had the opportunity to view the photographs. Chair Wilson asked the Board Members and CEO McDonough if they had any questions pertaining to the photos. No questions were asked.

Chairman Wilson asked both Kurt Osgood and Terry Swain who are representing the applicant if they had any additional information to offer to the Board, to which they replied that they did not.

Chairman Wilson asked, members of the public which were in attendance if they had any questions. There were no questions asked by the public in attendance.

Chairman Wilson asked if there were any objections. No one in attendance had any remarks. Chairman Wilson stated that Public Hearing will be closed and there would be no further comment from those in attendance.

**Parker made the motion to close the Public Hearing at 6:20 pm.** Duell seconded the motion. The vote was taken. **The motion carried. (3-0-0)**

Chairman Wilson asked members Duell and Parker for comment. Duell offered that the appeal from the variance was straight forward and within the guidelines of the ADA. Chairman Wilson explained that this is not an ADA decision, it is the decision of the Town and the State to waive Setback Requirements under Town of Lebanon Ordinance, or not.

Chairman Wilson opened the only copy of a confidential letter from the applicant Meador's doctor. Each Board member was able to read the letter, however, the public is not allowed to read due to the confidentiality of the applicant's reason for disability. The contents of the letter and the nature of the applicants disability will not be discussed in the meeting for it is confidential and only for the Board to assist in making a decision.

Chairman Wilson asked Board Members if they felt that the applicant indeed has a disability that exists. **The Board agreed unanimously that they were satisfied that the applicant Meador has a qualifying disability.**

Chairman Wilson asked COE McDonough and members Duell and Parker if they had any concerns to which they all replied "No".

Chairman Wilson asked the applicants' representatives what precautions would be taken to ensure that Mr. Meader would not roll into the street if he or a caregiver lost control of the wheel chair.

Mr. Osgood explained that it is highly unlikely that the wheel chair would pick up enough speed to bypass the landing as the proposed landing will be set into the ground. In the even that it happened, there is a berm being placed between the landing and the street that would also have to be cleared for a wheelchair to enter the street.

**Board Members determined that the project would not be harmful to the area.**

Member Parker mentioned that he would like to see some reflective material on the structure to ensure that it can be seen by traffic passing by the home. Mr. Osgood replied that he felt it was not needed for the structure will be set back twelve (12) feet from the paved road. Member Duell agreed with member Parker that reflective material should be incorporated into the design of the structure to ensure visibility. Mr. Osgood offered that there are six (6) inch oblong shaped strips that can be screwed onto the structure. On the outside edges of the structure there are wrapped wooden 2x6's that the reflective strips can be screwed onto as well as the end of the platform.

Member Parker wanted mentioned that the reflective materials used should be the most cost effective for the applicant.

**Member Duell motioned to grant the variance for the ADA wheelchair ramp to be constructed as presented.** Member Parker seconded the motion. The vote was taken. **Motion Carried (3-0-0).**

Chairman Wilson explained to the applicant's representatives that the State gives authority to Local Boards to impose conditions in addition to variance approvals. These conditions will follow the applicant/property owner and not the company who will be installing/removing and replacing the structure for when the time comes for the structure to be removed and the replacement structure to be constructed, the company may not be in business.

- **Once the structure is no longer needed, the homeowner is to remove structure and replace the entry stairs and landing similar to the current structure.**
- **The homeowner/applicant must obtain the proper permits from the Code Enforcement Officer prior to the start of construction of the ramp and landing to access the home**
- **The homeowner/applicant must obtain the proper permits from the Code Enforcement Officer at such time that the structure is to be removed as well as prior to the start of construction of the new stairs and landing. The approval of this variance does not excuse the applicant/homeowner from applying for the required permits and / or variances at the time of removal / replacement, however it is noted that replacement of a structure of similar dimensions to the 9' X 5' deck and stairs is a condition of this variance by the Lebanon Board of Appeals.**
- **Reflective six (6) inch strips will be attached to the structure on each of the 4 landing posts at the end of the ramp for visibility from the road**

**Motion to accept conditions of this variance approval made by member Duell.** Member Parker second the motion. All members present are in agreement, Chairman Wilson, Duell, and Parker.

**Motion carried. (3-3-0)**

**FINAL DECISION: Approval of Variance, with conditions (3-3-0)**

**CONDITIONS of VARIANCE:**

- **Once the structure is no longer needed, the homeowner is to remove structure and replace the entry stairs and landing similar to the current structure.**
- **The homeowner/applicant must obtain the proper permits from the Code Enforcement Officer prior to the start of construction of the ramp and landing to access the home**
- **The homeowner/applicant must obtain the proper permits from the Code Enforcement Officer at such time that the structure is to be removed as well as prior to the start of construction of the new stairs and landing. The approval of this variance does not excuse the applicant/homeowner from applying for the required permits and / or variances at the time of removal / replacement, however it is noted that replacement of a structure of similar dimensions to the 9' X 5' deck and stairs is a condition of this variance by the Lebanon Board of Appeals.**
- **Reflective six (6) inch strips will be attached to the structure on each of the 4 landing posts at the end of the ramp for visibility from the road**

Chairman Wilson informed the applicant representatives within seven (7) days the Facts of Finding and Conclusion of Law will be complete. Once Completed, the applicant will need to bring the document to the Registry of Deeds in Alfred to have it recorded.

Chairman Wilson asked when the start of the project was to take place. Mr. Osgood will would like to start as soon as the warmer weather arrives and the ground is not frozen.

Chair Wilson states that the Public Hearing and Decision of the Lebanon Board of Appeals in the application for Donald Meador, 405 Little River Road has ended and the Board will now attend to other business.

Chair Wilson states that CEO McDonough is welcome to leave or stay for the remainder of the meeting. CEO McDonough chooses to stay.

Chairman Wilson asked the board members present if they had a chance to review the Town of York Appeals Board By-laws and compare them to Lebanon's. Board Members state that they have done preliminary reading but have not thought through any possible recommendations for changes.

Michael Parker felt that changes needed to be made with regard to Board Members who are out of Town during the Winter months. Member Parker felt that if you are going to apply for the Board that members should be in Lebanon for at least ten (10) months out of the year.

Discussion was held with regard to removing Board Members who did not attend meetings. Chairman Wilson stated the Selectboard would have to remove the member. It is difficult to get volunteers for any board. Even though there are members who are not in Town for several months out of the year, does not mean that they do not have anything to offer. All members have their strengths. Chairman Wilson made the suggestion that perhaps those who are out of town for extended periods could be appointed only as alternate members, leaving the full member seats open for year round residents of Lebanon. Board Members agreed they would like to see a change in that portion of the Lebanon Appeals Board Ordinance.

Member Parker asked if there were a way that members could attend meetings via conference call. Chairman Wilson offered that she has attended meetings in Berwick and they have Skyped members so it must be legal. Chairman Wilson will look into this.

COE McDonough mentioned the informational packets that the members receive for review at the hearing. Chairman Wilson replied that the information could be scanned and sent via email to the member to have during the meeting(s).

Discussion is held that because these rules are part of a Lebanon Ordinance, any changes to procedure or wording would need to go before the people for a vote.

Member Duell added that it will be a problem with people retiring and not being in Town year round. Perhaps increasing the number of board members would help alleviate this issue.

Member Parker added if the number of members is increased, than the number of members for a quorum increases as well and that can pose a problem as well.

Chairman Wilson stated that you cannot force members to stay in Town.

Member Parker offered that perhaps, if the regular meetings were listed on the town's website, along with the agenda, people could more easily commit to which meetings they can attend.

Chair Wilson states that regular meetings of the Board could be placed on the Town website schedule, however things would also depend on what comes into the office as applications to be heard before the Board. There could be four (4) or more applications in a month once the weather gets better and due to time constraints for hearing cases, there would have to be several Public hearings within thirty (30) day's time.

Discussion of terms took place. The current *Board of Appeals Ordinance* states in

*Section 1. Appointment –*

*1.3 states that the term of each member upon the board's initial appointment shall be for 1, 2 or 3 years. The alternate member shall be appointed for three years.*

Members are appointed not elected.

Resident Bill Lane asked how a resident becomes a member of a board. It was explained that a resident will fill out a board or committee application which would be sent to the Selectboard to be reviewed and accepted, followed by the Selectmen appointing the resident to a board or committee.

Chairman Wilson explained that the Planning Board invites prospective members to one or two of their meetings to see whether or not the members feel the applicant would be a good fit for that Board. The Appeals Board, however, has not been allowed to choose or pre-screen their members.

Chairman Wilson referenced to Member Parker that according to the Lebanon Board of Appeals Ordinance, the Selectboard has forty-five (45) days in which to fill empty positions within the Appeals Board. The previous Chairman of the Selectboard said that they could not find anyone to fill the vacancy. Chairman Wilson stated that she is not comfortable in choosing board members for how it may look to the public. Chairman Wilson looked for someone she did not know personally, but who is not afraid to speak their mind and to make informed decisions. Chairman Wilson affirmed that she had never met Member Parker prior to his appointment. Member Parker had expressed an interest through social media in the full member seat. The previous Selectboard Chairman however, chose another applicant for the full member seat, and appointed Michael Parker as the applicant.

Chairman Wilson added, speaking to the Board and Selectboard Chair Philbrick, that there will be an alternate seat available that will need to be filled when member Parker is appointed as a full member this coming Thursday, March 14<sup>th</sup>, 2019.

Chairman Wilson mentioned that it took 8 months for a new member even though the current *Appeals Board Ordinance* states in

*Section 1 Appointment – 1.4 When there is a permanent vacancy of either a member or the alternate, the municipal officers shall within forty-five (45) days or as soon as possible thereafter appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse, or when a member ceases to be a resident of the Town. The municipal officers may remove members of the Board of Appeals by majority vote, for cause, after notice and hearing.*

Chairman Wilson reiterates that she feels that a member should not be chosen by the Chairman of the Appeals Board or any of its members.

Member Parker suggested that perhaps a mailing could be sent to see if people would be interested in serving on a board and or committee and if so, which would they like to serve on. A mailing could reach more residents than an email or having forms at the Town office. Not everyone may know that there are positions open.

Resident Mary Lane asked why the Board would appoint a member who is known to be gone for six (6) months out of the year. Chair Wilson states that it is the Board of Selectmen who choose that option.

Member Duell stated that years ago, the man of the house worked all day then served on boards after work. They made the time to be involved.

COE McDonough stated that the structure of society has changed, people are working more than one job people just don't have the time to volunteer.

Chair Wilson answers that she does not feel the changes are due to working schedules as residents still find the time to attend sporting events, movies, and other fun outings, the Chair feels the lack of volunteers is more due to an air of apathy that has crept across not only Lebanon or Maine, but the Country.

Chairman Wilson would like to streamline the process of having alternate members filling in for a full member with a long-term absence by only requiring the Chair to make that appointment once to allow the alternate to participate in the voting process in meetings during the full term of the missing member's intended absence instead of making that choice at each individual meeting.

The suggestion was made by Michael Parker that if a member is going to be unavailable for thirty (30) days or more, then their membership could be suspended by the Chair until they made notice of their return into town. The Chair could appoint the alternate member to fill their seat for the full term of the absence.

It was suggested by Lyle Duell that there should be two (2) alternates appointed to the Board.

Discussion took place in regard to

*Appeals Board Ordinance Section 2 – Organization, Rules and Procedures, 2.1 The board shall elect a chairperson and a secretary from among its full voting members and create and fill such other offices as it may determine necessary. The term of all offices shall be one (1) year with eligibility for re-election.*

The Appeals Board has been "given" the Land Use Clerk for secretarial duties. The question of does this violate the Ordinance? Does the Appeals board still have to elect a secretary in name only? Chair Wilson will reach out to the Board of Selectmen and ask for a legal determination of the questions pertaining to a "secretary".

Due to other commitments of two members, discussion on proposed changes to the Lebanon Appeals Board Ordinance will continue the next time that the board meets, which will be for a Site Visit, Public Hearing and meeting scheduled for Monday, March 25, 2019.

**Motion to close the meeting by Member Duell.** Seconded by Member Parker All in Favor. **Motion Carried.(3-0-0).** Meeting closed at 7:36 pm.