

Deborah Wilson
Lyle H Duell

Lebanon Maine Board of Appeals

Public Hearing Minutes

Monday, March 25, 2019 @ 6:00 pm

Peter Wallstrom & Diane Munroe – 457 West Lebanon Road – Map U8, Lot 19

Members Present

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

Others Present

Peter Wallstrom - Applicant
Diane Munroe - Applicant
Steve McDonough – COE
Dana Coull – Resident
William Hanzl – Abutter
Karen Hanzl – Abutter
Alan Shepard – Legal Representative - Hanzl
George & Elva Lovejoy - Residents

Chairman Wilson stated to those in attendance a brief overview of this Public Hearing. The applicants would like to split their lot and in order to access the lot a right of way would need to be created which would not meet the setback requirements.

Pledge of Allegiance

Chairman Wilson introduces the members of the Appeals Board and announced that Michael Parker a former Alternate Member has been appointed as a full voting member of the Appeals Board.

Chairman Wilson made the motion to open the Public Hearing. Member Parker seconded the motion. The vote was taken. The motion carried.

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

The applicants were asked if they were ready to present their case. Mr. Wallstrom began by asking if anyone needs a copy of the proposed project and then began to explain that both he and Ms. Munroe have had health issues which have been increasing within the past five (5) years. Their Doctors have recommended that they stay on the first floor of their current home because they should not be using the stairs. He proposed a small ranch – which would be one floor with handicapped access. This would be located in the back field of the property. Mr. Wallstrom added that he and his wife were married in that spot. He thought that they would be able to create a right of way to access the proposed back lot to create a home suited to their health issues. The issue is that there are two barns that would not meet the setback requirement from the right of way. He also added that there would be only one home on this proposed lot.

approved 6/10/2019

Alan Shepard, Legal Representative for Mr. & Mrs. Hanzl asked to see the full size plan that was on the conference room table for easier viewing.

Chairman Wilson asked how many acres is the property.

Mr. Wallstrom replied that there was a bit over seven (7) acres. The driveway was used to repair large trucks. Once the proposed right of way is past the shed, it opens up to the required fifty (50) foot setback.

Chairman Wilson read into record the denial letter from Code Enforcement Officer McDonough which includes the reason(s) for the Public Hearing for a variance today. Chairman Wilson explained that the issue is the creation of the right of way causes a setback problem.

Chairman Wilson asked Appeals members Duell and Parker if they have any questions at this time.

Member Duell asked Mr. Wallstrom when they purchased the property.

Mr. Wallstrom stated that they purchased the property in 2003.

Chairman Wilson read the deed that was submitted by the applicant and the property was purchased in November of 2003.

Chairman Wilson asked Appeals members Duell and Parker if they have any questions at this time, to which they both replied they did not.

Chairman Wilson stated that she did have a couple of questions for the applicants. The question of what they planned to do with existing home/property.

Mr. Wallstrom We plan on selling the existing home.

Mr. Hanzl replied/asked Mr. Wallstrom so you are

Chairman Wilson explained that Mr. Hanzl cannot ask Mr. Wallstrom questions at this time.

Mr. Hanzl so the barn would be sold with the house.

Mr. Wallstrom replied that it was being sold as a package.

Attorney Alan Shepard asked if he could ask/make some comments.

Chairman Wilson stated that he may as long as they are relevant to the application.

Mr. Shepard began with Mr. & Mrs. Hanzl own farm land adjacent to the property and they are concerned about the development of the property. A lot in Lebanon needs road frontage in order to be created. Mr. Wallstrom is not the first to do this, road frontage has been sort of This Mr. Wallstrom would not be the first to do this, it is known in Lebanon that road frontage has been at times rigged to allow the creation of a buildable lot. Now, the Ordinance states have to comply

with the setbacks but it also states they can ask for a variance. Now in order to apply for a variance there are certain hardships that have to be met.

Chairman Wilson informed Attorney Shepard that they had not reached that point in the deliberation as of yet and that this was not his meeting to run.

Attorney Shepard stated that he has the right to address the Board in regard to in order to explain the criteria in order to make a decision.

Chairman Wilson said that you have a right to comment but you do not have the right to direct the Board that is my job.

Attorney Shepard continued to explain the application and each criteria that needs to be met.

Once again Chairman Wilson stated that this was not Attorney Shepard's Board to direct, that is her job as the Chairman.

Chairman Wilson asked both Members Duell and Parker if they understood what their job was which they both replied that they are aware and understand what is expected in order to make decisions.

Chairman Wilson said that she would like to make a motion that we skip hearing what we do for a job. Member Parker seconded the motion. The vote was taken. The motion carried.

Chairman Wilson asked if there were any other questions and or comments. Resident George Lovejoy asked if the right of way could be place on the other side of the property.

Peter Wallstrom stated that they are unable to do so for that is where the septic system and the well are located.

Chairman Wilson asked the COE McDonough would like to add anything to the discussion. COE McDonough stated that everything he needs to mention was in the letter of denial that had been already read into record.

Chairman Wilson asked if there were any questions for the Code Enforcement Officer.

Mr. Hanzl would like to say that he is disappointed that the property is being split. They bought their property about twelve (12) – thirteen (13) years ago. When other property became available they bought the property for farm land was and continues to be disappearing not only in Lebanon, but everywhere. He and his wife are disappointed that they property is to be split.

Chairman Wilson asked the COE if he had anything to add to which he replied that he did not.

Chairman Wilson explained that Mr. Wallstrom and Ms. Munroe have the right to choose this and I understand your feelings but the topic of the property being split is not the reason for this Public Hearing.

Member Duell asked the COE if the setback from the right of way was the only issues to which he replied that it was the only issue.

Chairman Wilson asked the applicants if they had a rebuttal

Mr. Wallstrom stated that they understand how the Hanzl's feel, but they are in the position that they have to have a one (1) floor house. They are already living on the first floor in the current home in three (3) rooms. Mr. Wallstrom explained that they love where they are. Their neighbors have been so good to them the past five (5) years with all of their health issues and helping out. The property is special to them, they were married there. The home would not cause the property to be unattractive, if anything the new home would enhance the lot. They do not have another choice or option than to split the lot and build a home to accommodate the health issues that they have.

Mr. Hanzl went into the history farmland in Lebanon and various ways it has been utilized through the years.

Chairman Wilson asked Appeals members Duell and Parker if they have any questions at this time.

Chairman Wilson asked the applicants 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, for it was time for the Board to deliberate.

Chairman Wilson asked if the road is too narrow. COE it's not that the road is narrow, it is that there is not (fifty) 50 feet between the right of way and the structures.

Member Parker made the motion to close the public hearing. Member Duell seconded the motion. The vote was taken. The motion carried.

Chairman Wilson stated that the public hearing is not officially closed and unless directly asked by the Board, there will be no further comments and or questions.

Chairman Wilson told the Board that they will start with the Hardship Criteria. She read into record Section 4. Variance from the Lebanon Board of Appeals Ordinance.

Chairman Wilson explained to those in attendance that the Board will go through and discuss each hardship one by one and have a straw vote for each criteria. Then the Board will take the final vote.

Chairman Wilson asked the Board in regard to the first criteria if they felt that the property can yield a reasonable return.

All three (3) members agree that the property can yield a reasonable return.

Chairman Wilson asked the Board in regard to the second criteria if they felt the need for a variance is due to unique circumstances of the property and not the general conditions of the neighborhood.

All three (3) members agreed that there is nothing unique with the property that would cause the need for this variance.

Chairman Wilson asked the Board in regard to the third criteria if they felt that if granting the variance would alter the essential character of the locality.

All three (3) members agreed that the granting of the variance would not.

Chairman Wilson asked the Board in regard to the fourth and final criteria if they felt that the hardship is not the result of an action taken by the applicant or a prior undue hardship.

All three (3) members agree that the hardship is not a result of any action of the applicant or a prior owner

Chairman Wilson explained that all of the criteria has not been met. The suggestion was made that if the structures were removed, then the right of way can be created.

Member Parker asked why a right of way was needed.

Chairman Wilson explained that you need to have two-hundred (200) feet of road frontage.

Member Duell again suggested that if garage were removed there would not be an issue with the right of way. Chairman Wilson and Member Parker also agreed.

Peter Wallstrom asked if both of the structures would have to be removed.

Chairman Wilson explained that both would have to be removed because both structures do not meet the fifty (50) foot set back from the right of way.

Chairman Wilson made the motion to deny the variance for the structures are too close to the proposed right of way.

Member Duell stated that there is a conflict between the head and the heart, but the State regulations do not want us to grant the variance.

Member Parker offered again that if the structures were removed that no variance would be needed.

Chairman Wilson agreed and added that there would be no reason to vary from the law.

Peter Wallstrom asked if there would be a time span to remove the structures.

Member Duell asked if COE McDonough could answer that question.

Chairman Wilson stated that the applicants can set up a time with the COE to discuss.

Board Members determined that the project does not meet all of the hardship criteria.

FINAL DECISION: Chairman Wilson made the motion to deny the variance. Member Parker seconded the motion. The vote was taken. The Motion Carried (3-0-0).

Member Duell informed the applicants that they have the right to go to a judge if you so choose to do so.

Chairman Wilson added the Findings of Fact and the Conclusions of Law document can be used as a court appeal 45 days from today. If you have new evidence to bring to the Board, you may do so within 15 years for a reconsideration.

The meeting was closed at 6.50 pm.