

*File in Duell  
Dorothy R. Wilson*

**Lebanon Maine Board of Appeals  
Public Hearing Minutes  
Monday, January 14, 2019 @ 6:00 pm  
Norman & Melissa Albert – Spencer Lane – Map U16, Lot 16**

**Members Present**

D. Wilson - Chairman  
L. Duell  
M. O'Brien  
M. Parker - Alternate

**Others Present**

Norman Albert – Applicant  
S. McDonough – CEO  
Jenn Griffin - Clerk

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

Pledge of Allegiance

Chairman Wilson introduces Applicant Norman Albert. Land Owner.

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

Chairman Wilson introduces new Appeals Board members Michael O'Brien who was appointed as a full member and Michael Parker who was appointed as an alternate member.

Chairman Wilson introduces Appeals Board Members. There are 3 full voting members in attendance, Wilson, Duell and O'Brien. Chairman Wilson invited alternate member Michael Parker to participate in the discussion, he may ask questions however would not be voting unless the Board feels that he should vote the absence of the two Board members not in attendance or in the event one of the three full voting members needed to remove themselves from the vote due to a conflict of interest.

Chairman Wilson and sets Meeting Agenda.

Chairman Wilson asks the applicant, Norman Albert to state his case for variance.

Mr. Albert explained to the Board when he purchased the home 2 years ago, an enclosed on demand generator was already in place. This past October, there was approximately a week that the power was out and due to the generator running for that amount of time, it burned out.

Mr. Albert would like to replace the generator. The new generator did not meet the space standards that the installer and manufacturer require. The alcove is 9 inches too small, 4 1/2 inches on each side are needed to accommodate the new generator. When Mr. Albert came to acquire a permit to install the new generator, it was found that the property lay within Shoreland Zone. Discussion took place and a decision to build a platform above the alcove where the existing generator was housed, would not impact the lot coverage for the lot was already approximately 600 square feet over the 20% lot coverage allowance per the Shoreland Zoning Ordinance. A building permit was issued to place the generator on the roof of the currently existing alcove.

*approved 6/10/2019*

Mr. Albert returned to Code Enforcement to explain that the installer/manufacture would not install generator in the location stated in the building permit (the metal roof of the house, garage or alcove) due to safety issues for their employees should the generator need maintenance or repair.

Mr. Albert submitted a second building permit application which was denied as the side lot setbacks could not be met which would make the lot even more non-conforming. The suggestion of placing the generator on the patio out back of the home was mentioned by Code Enforcement Officer Steve McDonough, but Mr. Albert did not want to have the generator on the patio. The electric lines are already established as well as the propane lines.

Mr. Albert stated that if they lose power they would have to close everything up. Mr. Albert does not feel that the generator is a permanent structure. He can take it with him if he moves by disconnecting the electricity and the propane. Other Towns consider generators as a "utility" and therefore they are exempt.

A letter of denial was written by the Code Enforcement Officer of the Town of Lebanon, (please see attached). Mr. Albert was referred to the Appeals Board.

Mr. Albert stated that his new generator is not any larger than his previous generator. Generator specifications provided by the applicant were entered into the evidence of the case. The current alcove would provide for 14" of space on either side of the new generator. The manufacturer requires 18" of space on each side of the new generator.

Member Duell asks the applicant if he has letters of approval from his abutters. Applicant answers that all abutters were notified of the public hearing and that none attended to voice an opinion.

Chairman Wilson notes that there are no property abutters or members of the public present for the Public Hearing. Members view the abutters list, letter of notification, and return postal receipts from the abutters.

Member O'Brien asked Mr. Albert if he could have a smaller generator. Mr. Albert stated that it is the encasement of the generator that is the issue. The previous generator was a 13, which is no longer made. The proposed generator to be installed is a 17. A smaller sized generator would not provide enough power to meet the demands of the house.

Applicant states that it is the size of the casement of the generator that causes the issue.

Chairman Wilson asks the applicant if he is intending to place a concrete pad. Applicant states that he will abide by the Boards decision on what to place the generator on.

Discussion is held that determination has been made that the generator itself is considered a "structure" under the current ordinance.

Chairman Wilson read the letter from the Lebanon Code Enforcement Officer Steve McDonough, including the description of a "structure" from the State Shoreland Zoning Guidelines, and the Code Enforcement Officer's determination that the generator is considered a structure.

Chairman Wilson closed the applicant's time.

Chairman Wilson opened discussion to Lebanon Code Enforcement Officer Steve McDonough.

CEO McDonough outlines that the generator is 12.5 square feet and would be 11 feet 3 inches from the property line. The house, which according to the CEO, is the closest current structure is 14 foot 2 inches to the property line, making the structure more non-conforming than it was previously with regard to the 25 foot side setback.

CEO McDonough reaffirms that the applicant was already at 25.24% of impervious surface, and this generator would increase the amount of impervious surface.

CEO McDonough states that the letter from DEP states that they agree with his assessment of the generator as a structure.

CEO McDonough states that the application was also denied as impervious coverage is limited to 20% of the lot size.

Alternate member Parker questioned why the applicant could not replace the generator; Code Enforcement Officer stated that the new generator would be in a different location, closer to the property line than it was before, therefore it would make the lot more non-conforming.

Parker states that he felt the new generator would be in the best possible location for it to be. Code Enforcement Officer states that it may be the best possible location, but his job is to enforce the codes as written.

Chairman Wilson read into record the determination by Dawn Hurd, Assistant Shoreland Zoning Coordinator, Department of Environmental Protection, stating that the generator was, in her opinion, according to the definition, a structure. It is noted that Ms. Hurd refers to the replacement of an existing generator with a larger generator. It is noted by Chairman Wilson that the replacement generator is not a larger generator. **No recommendation was made, for or against the proposed project in the DEP document.**

Discussion is held with regard to the difference between an encased permanent generator and how it is different than a portable generator that is wheeled into the garage and then wheeled out again for use. CEO McDonough thinks Wilson's question is irrelevant. Wilson redirects the CEO to answer the question. CEO McDonough does not think there is a difference, saying that this definition applies to anything you can possibly think of. He does not believe you can create a list of exemptions without creating more loopholes.

CEO McDonough states that it is not his intent to deny the applicant his generator. It is strictly his intent to do his job.

Member Duell questions the letter from DEP. Duell is concerned that the DEP was under the impression that the replacement generator was a larger sized generator. The DEP letter refers to "conversations" where a larger generator was discussed.

McDonough states that he did not ask a question. He states that he submitted the application to DEP and they did call and have a conversation with regard to the application but he cannot recall the discussion verbatim, but it was to review the application they both had in hand.

CEO McDonough states he finds the discussion of generator size to be irrelevant. He finds the new location to be more of a concern.

Chairman Wilson also read into record an email which was received from John Perry, Maine Department of Inland Fisheries and Wildlife. MDIFW stated that their Department did not find the proposed project to have any significant impact to fish or fish habitat. **No recommendation was made, for or against the proposed project by MDIFW.**

Chairman Wilson explained that the Appeals Board follows several guidelines to make a determination on variances.

CEO McDonough interrupts the meeting to question the agenda and whether there were more questions for the CEO. There are no further questions.

Chairman Wilson states there are 4 hardship criteria that need to be met. Chairman Wilson went through the answers that the applicant provided with the application due to the extensive and detailed answers on Mr. Norman's application to each criteria. Wilson left the meeting as public at this time to provide the answers into the video record and allow the Board members, CEO as well as the applicant any comments or questions.

Applicant states that other towns where he has worked consider generators as a "utility" and therefore they are exempt from setback requirements. Chairman Wilson reminds the applicant of the DEP letter agreeing with CEO McDonough that under Lebanon's description of "structure" a generator would be considered as a structure. Applicant argues that Lebanon's ordinances are not well written. Wilson reminds the applicant that this particular section of Lebanon's ordinances come directly as written from the State's Shoreland Zoning Guidelines.

Chairman Wilson asks how many other homes on Spencer Lane have permanent on call generators. Applicant states 7 including his own. 5 of those are on year-round properties. Applicant states all on call generators in the area are similar or the same systems as he is requesting.

Member Duell questions who issued the permit for the building. Applicant states it was built in 2007. Discussion is had that other structures existed there prior to 2007.

Member Duell questions the amount of power outages in the area. Applicant states that there are. Both he and his wife work so they could come home to a power outage. Applicant states that the area gets their power from New Hampshire and not from Maine. Wilson agrees that many times people on the waterfront are subject to power outages that the rest of Lebanon are not experiencing at the same time.

Member Duell asked the applicant what he is planning to do with the alcove area. Mr. Albert replied he did not intend to do anything with the space. He offered to take the roof off of the alcove if that helps to increase the impervious space of the property.

Chairman Wilson asked the Code Enforcement Officer if the applicant removed the roof above the current generator's alcove if that would be acceptable. CEO McDonough stated that if the roof were to be removed, the existing alcove area would need to be revegetated and stay as such, but the square footage could be traded if that were accomplished. CEO states he would not have a problem with that trade.

CEO states it is his policy that if the property is at 25.24% prior to this situation, he is grandfathered for that amount. He would not ask for a reduction. He would ask for the amount to remain at least the same.

Chairman Wilson asks CEO McDonough for that particular part of the application, would he feel comfortable with the applicant removing the roof to create more impervious space. CEO states that he would be comfortable with that.

Applicant questions, under the current description of structure in the town's ordinance, the currently existing propane tanks by the side of the garage, are closer to the side lot line than the replacement generator will be, creating an already existing non-conforming measurement. The tanks have been on the property since before he purchased it. Chairman Wilson asks the CEO his feelings on this statement. CEO demonstrates his feelings with a drawing.

Chairman Wilson discusses fire and exhaust safety with placement inside of the current alcove. Generator manufacturer's distance specs are discussed.

CEO McDonough mentions that there has been an error of the Board. McDonough states the Board has been discussing "impervious area" and the ordinance does not mention impervious area, but rather non-vegetated area. CEO states that his letter, and Shoreland Zoning Ordinance both address non-vegetated area, not impervious area. Board notes CEO's use of the word non-vegetated.

**Motion by Member O'Brien to end the Public Hearing.** Second by Member Duell. All in favor. **Motion Carried. Public Hearing ended at 7:00 pm.**

#### DELIBERATION

Member O'Brien questions if the Applicant will have to reapply for another building permit. CEO states that he is not sure why O'Brien is asking the question. O'Brien asks with different wording. CEO states that if the variance is granted the Applicant will have to pay an additional fee and apply for another building permit.

Chairman Wilson discusses with full voting Board members whether Alternate member Parker should be allowed to vote, in the absence of members Demers and Leuchs.

**Motion is made by member Duell to allow Alternate member Parker to vote in the absence of 2 full members.** Second by member O'Brien. All 3 full members, Wilson, Duell and O'Brien in agreement. **Motion Carried. 3-0**

Discussions and straw votes were taken on each of the 4 Hardship Criteria.

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

Chairman states that 3 members, Wilson, Duell and Parker are in agreement that the Applicant has met the burden of proof on the first criteria. 1 member, O'Brien, against.

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.**

Chairman states that 3 members are in agreement in feeling that this Hardship criteria was not applicable to this case. Wilson, Duell and Parker. 1 member, O'Brien, did not agree.

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

Chairman states that 4 members, Wilson, Duell, O'Brien and Parker are in agreement that the Applicant has met the burden of proof on the third criteria.

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

Chairman states that all 4 members are in agreement that the Applicant has met the burden of proof on the fourth hardship criteria, Wilson, Duell, O'Brien and Parker.

Member Duell discusses general safety and health practices of residents need to be considered within a decision for variance. Duell discusses that the best possible placement of the new generator needs to be considered. The proposed placement allows for best exhaust release, it is safer in the case of a malfunction causing a fire, and it is much safer in regard to fire, repair, and exhaust to place the generator on the ground, than to put it on the roof of the house or garage.

**Member Duell made the motion to grant the variance of 13' 9" to allow generator to be placed no closer than 11' 3" to the property line, only the encased generator to be placed on crushed stone, no pad of any kind.** Second by Alternate Member Parker. 3 members agree with the motion, Wilson, Duell, and Parker. 1 member, O'Brien, does not agree. **Motion Carried 3-1**

**FINAL DECISION: Approval of Variance. 3-1**

**CONDITIONS of VARIANCE: The applicant must remove the roof above the alcove where the previous generator was placed. The area of the previous generator alcove between the house and the garage, must be revegetated and kept as such.**

**Motion to accept conditions of this variance approval made by Alternate Member Parker.** Member Duell second the motion. 3 members are in agreement, Wilson, Duell, and Parker. 1 member, O'Brien, is not. **Motion Carried. 3-1**

Chairman Wilson informed the applicant within 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.

**Motion to close the meeting by Alternate Parker.** Second by Member Duell All in Favor. **Motion Carried.** Meeting closed at 8:04 pm.