

Zoning Board of Appeals
June 26th, 2017
Casco Community Center

Members Present: Geof Hancock, Steve Linne and Trevor Tidd
Members Absent: Terri Linnell and Pat Troy
Staff Present: Alex Sirois, CEO and Sandy Fredricks, ZBA Admin. Asst.
Public Present: See attached

Trevor calls the meeting of the Zoning Board of Appeals to order at 7:00 P.M.

Trevor reads the required information into the record and for those present as follows:

1. Please recognize all statements through the Chair.
2. Please introduce yourself before speaking.
3. Applicant will receive a written Decision within 7 days of this meeting and has 45 days to appeal to Superior Court.
4. Applicant may stay for the Decision but cannot in any way participate in this part of the meeting.
5. If approved, the applicant will receive a Certificate of Zoning Variance Approval with the Notice of Decision and has 90 days to record it the Registry of Deeds. If you do not record it within the 90-day limit, the Decision is automatically void and you cannot appeal for one (1) year.
6. A permit secured by vote of the Zoning Board of Appeals under the provisions of this Ordinance shall expire if the work or change involved is not commenced within one (1) year of the date on which the appeal is granted, and if the work or change is not substantially completed within eighteen (18) months of the date on which such appeal is granted.

Trevor states we have Minutes of May 15th, 2017 to be approved.

Steve moves to approve the Minutes as written.

Geof seconds.

Any discussion? None.

All in favor? 3 yes – 0 no – 0 abstain

Trevor states the Board has before it application for an Administrative Appeal filed by Benjamin M. Leoni, Esq. on behalf of Daniel Vallee and Hugh Solari regarding the issuance of a dock permit to Brandon Plourde. The Plourde property is known as Map 22, Lot 48, commonly known as 32 Garland Road. The permit issued by the CEO is for a temporary dock in the Common Land of the Association. Both parcels are located in a LRR Zone.

Trevor opens the Evidentiary portion of the meeting.

EVIDENTIARY

Benjamin Leoni introduces himself to the Board and states he represents Dan Vallee and Hugh Solari who are owners of property on Acadia Road. He sums up what he has submitted to the Board. Additionally, Ben reviews some information which he has handed to the Board at the meeting. Further, Ben states the parties and the Town Attorney all agree the dock is non-conforming and it should be allowed if it is legally non-conforming; the problem is, as they see it, the dock isn't grandfathered as it has only been in place since 2004 or 2005 and this zoning was already in place at that time.

Ben goes on to state that the dock application was for a new dock by a different property owner at a different location. He continues that an appurtenance cannot be for a different lot and be grandfathered. Accordingly, can a previous CEO issue a permit for something that wasn't allowed to be permitted. Ben directs the Board to Page 12 of his handout where he has excerpted §9.14.4 *Procedure for Administering Permits*. It clearly states "The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article." Ben continues asking the Board to read on Page 2 "**Non-conforming condition** – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect." He states that this would mean the dock would have to be in that condition on the day the ordinance was adopted; it is not the case here. He next moves to Page 3 of the handout where it specifically states "**Prohibited Use** – All uses not specifically allowed as Permitted Uses." Ben wishes to speak about §9.12 and 9.12.1 on Page 6; "It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in this section." He continues that non-conformity under zoning, the general rule under law is trying to eliminate that non-conformity.

The next item addressed is Page 9, §9.13.3 **Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High Water Line of a Water Body or Within a Wetland**. "(B) The location shall not interfere with existing developed or natural beach areas." Ben states that a beach area is defined by the Maine Supreme Court and there are beach areas that fall under both high water and low water marks and that section is all part of the beach. He continues that § 9.13.3 (D) states "The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses." Ben states that this is a very large subdivision created quite a while ago. The

developer created a strip along the shoreland as a common area as well as a beach area which is not part of this issue. Ben states it is their belief that pursuant to ¶ (H) on Page 10, is the appropriate way to preserve this beach area. “(H) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.”

Ben states that the shore frontage in the common area is 100’ for two docks. He continues that prior to enactment of this DEP Code all the other docks in the common area already existed and now with this new dock, it is clearly non-conforming as supported by the photos submitted from 2002. Steve asks if that part is part of what is in question. Ben states no.

Ben states the next photo shows Kennedys use of the beach and where you see the boulders in the picture is the Kennedys old dock. He continues that there is a permit issued in 2005 by Elwin Thorpe to Kennedy. Ben continues that Page 18 is the Stop Work Order – Notice of Violation issued by Alex on December 12th, 2016 regarding the old Kennedy dock. He goes on to state that Alex incorrectly points to § 9.13.3 (D) which states “The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.” Ben goes on to explain the photo on Page 20 is the old dock and you can see where the sand wraps around to the left and to the right as the beach area. He further states that Page 22 shows the stairs as extended over the beach area which Kennedy never got a permit for.

Ben next states that Page 23 shows you can see there are too many docks in this area and it is greatly congested. Next he states that Page 28 is a photo from Google Maps showing Acadia Road and all of Sebago Lake Shores area and as you can see there are a lot of docks; additionally at the top of the photo shows where the other beach area is located in the subdivision but as you can see the docks in that area are grouped then they skip a section then another group of docks, etc.

Ben continues to review the handout as follows: Plourde owns on Garland Road, Page 30 shows the Garland Road beach area and common docks; Page 31 shows the other section of the beach. Ben states that Page 36 is a copy of the Shoreland Project Permit issued the end of March; Page 39 is the old Kennedy dock in the common area, which shouldn’t have been there in the first place. Continuing, Page 40 shows the sketch of the dock permitted to Plourde and it would have been helpful if the sketch showed all the other docks. Ben states that Page 41 is a copy of the Deed to Plourdes; Page 42 is a copy of the District Court Decision dated May 2003, which Decision was later questioned

in a higher Court. Ben further states that even if you have the right to use the common land, you still have to comply with the ordinance.

Further, page 43 is a copy of correspondence (email) between Alex and the Town's attorney, Natalie Burns. Clearly, Ms. Burns did not have all the information as she states "This opinion is based upon the specific facts presented by this application and should not be interpreted as a precedent for all applications. Each application must be reviewed upon its own specific facts, which may lead to a different result." Additionally, Ms. Burns states "The replacement dock will still be non-conforming, but will be less non-conforming than the existing situation. Because this is a replacement dock, it is not reviewed the same way as a new dock in an area that had not previously had a dock. It is allowed to be replaced since it is decreasing the nonconformity." Ben states they would agree with this if the old dock has been legally non-conforming.

Ben states Pages 44, 45 and 46 show photos of how this has looked in 2001 through 2005 and the changes that took place. Lastly, Page 47 is a copy of the original Subdivision showing where Plourdes property is located and where his dock is located. Ben further states it is not that anyone says Plourde can't have a dock, he just can't have it on a beach.

Ben continues that in conclusion, we ask this Board as part of its findings, that it fails to meet DEP new shoreland zoning provisions and is not consistent with other docks as there are no other docks on the beach. He states that since no other documents are provided to show it was legally non-conforming, you cannot rely on it.

Trevor asks if anyone else has any opinions or comments they would like to give.

Carol Cottrill states she lives at 52 Acadia Road where Smiths and Whites had property for years. She gives some background information on the area. Further she states they removed rocks, which were allowed to be moved, back in the 60s and there have always been two docks there. She continues that she does not have a dock or a boat, her enjoyment is in the beach. Carol goes on to explain that Kennedys put in a dock without permits which was supposed to be seasonal, but it was usually left in year around. She further states that in 2012 there was an after-the-fact permit issued by Don Murphy; she met with him and he stated he never should have issued the permit and he was given incorrect information. Carol states that the additional dock does limit their use of the area. She shows the Board a photo of the area showing where a dock that's been there since the 50s is located.

Brandon Plourde states it seems to him the reason we are here is because the dock is on the beach and his house is too far. He continues that if you go to

Pages 24-25 of Mr. Leoni's handout, they say it's blocking access; the rocks are the end of the beach; we can't put the dock any further over without being in the rocks.

Dan Vallee states his vision of a beach is an area where kids can play volleyball etc. without a structure in the way so we are limited to how we can fully enjoy the beach.

Geof inquires of Alex how he feels about what Natalie Burns was referring to with the new regulations. Alex explains that the new regulation does not have language for singular vs. plural for docks so since this permit was issued prior to the new DEP regulations, it was non-conforming, but grandfathered.

Steve states the original permit was in 2005 and there was supposedly one after that issued by Don Murphy. Alex states he has no knowledge of a permit from Don Murphy. The common land is difficult; he continues he searched the files for 48 Acadia and didn't find one.

Steve and Alex discuss the beach areas in this subdivision. Alex states as the water gets lower, there is more sand which can be considered beach. He further states the fact that the subdivision has split off into several Road Associations makes it even more challenging.

Bill O'Donnell states he is 56 Acadia Road and he thinks the Plourdes are nice people, but they have a beach area on their side of the subdivision and they can apply for a dock in their area.

Tim Demirs states there was approximately 4000' of parkland originally; it is his understanding that Acadia Road broke off from the original subdivision and created their own association and he is not sure if they can still use the common land. He continues that he believes the association put a moratorium on docks several years back.

Bill O'Donnell states there is a little confusion about the Sebago Lake Shores subdivision; the deeded rights are with your land. He continues there is the Acadia Road Association and the Lake Shore Road Association and their road group uses that little beach while the other road association uses the beach in the photos.

Steve asks Plourde why he has a 60' dock. Brandon states that one reason it is that length is if you put the boat there, the water level drops so much there was no water by the dock. He further states that his is the shortest dock.

Bill O'Donnell states he doesn't know if Kennedys dock was that long, but he believes the new one goes about 6' further and the wooden ramp is where the new dock starts.

Dan Vallee states it is very shallow that's why he has to go so far out. He continues that it is shallow for the kids to wade in. Additionally, Dan says they were told by people in the neighborhood that Plourde was offered a place for his boat or dock, but he didn't like it.

Ben states that the photos on Page 16 of his handout shows the varying levels of the water in 2006. Additionally. He states Page 22 is what it looks like last weekend; there is definitely more water and when that goes down a little it is beach area.

Hugh Solari states he is at 68 Acadia Road and he understands they want a dock. He continues that he shared the beach with Kennedys who squatted on 60' of a 90' beach and no one else could enjoy it at all. Hugh further states that it is his understanding that Kennedys first installed the dock in 2003 without a permit. Elwin Thorpe was to look into it and didn't. He goes on to state he spoke with David Morton, but Kennedys didn't do anything. Hugh states he has a copy of the permit issued by Don Murphy; the fact that there was a permit issued way back, the attorney is making a decision on a file without all the information in it. He continues that permits should not be disappearing from the Town's files; hopefully when the Town's attorney can review all the information, it will change things.

Brandon shows the Board some photos of his dock and other docks as well as the rocks in the beach area.

Tim Demirs states his family has been there since it was created and the docks have been an issue for a long time. He continues when his dock was in, when the water level dropped he had to extend his dock. Additionally, he believes that Elwin at one time had created a community dock with fingers on it to eliminate the congestion. Tim further states that a 60' dock isn't long; his dock goes out about 100'.

Trevor closes the Evidentiary portion of the meeting and opens Deliberations.

DELIBERATIONS

Steve states that if this is non-conforming, it's like if you get a permit for a house and then build a deck without a permit; if the house burns down, then you don't allow them to rebuild the deck; deck should be built to standards.

Geof states he is concerned about the validity of it being grandfathered.

Trevor states that they should have a system in place as an association. Steve states that the Board can't tell them how to run their association.

Steve moves that the Board supports and upholds the appeal of the issuance of a dock permit by Dan Vallee and Hugh Solari.

Geof seconds.

Any discussion? None.

All in favor? 3 yes – 0 no – 0 abstain

Trevor moves to adjourn.

Steve seconds.

Any discussion? None

All in favor? 3 yes – 0 no – 0 abstain