

Appeals Board Meeting  
January 27, 2022  
Public Hearing

In attendance: Board Members – via ZOOM - Lowell Freiman, Norman Casas, Jim Kearny; In person - Bob deGroff, Cathy Blake, Peter Drum, Town Attorney, CEO Corey Fortin. Public in attendance: In person - Brian Daggett and Melissa Maker, Wesley Daniel via Zoom – Sarah Calland

Lowell Freiman opened the meeting at 7:08pm with roll call and stated they had a quorum to continue with the meeting.

Norman Casas motioned to accept the summary from the last meeting dated 1/06/2022, as written, Jim Kearny seconded, all in favor (5-0)

Old Business – none  
New Business - none

Norman Casas motioned to close the Appeals Board Meeting and move forward with the Administrative Appeal, Cathy Blake seconded, all in favor (5-0)

Lowell Frieman stated that the same quorum from the pre-hearing conference was present. This case is an Administrative Appeal for Mr. Daggett about the building permit denial. At the pre-conference hearing we determined that it was in the jurisdiction of the Appeals Board to hear this appeal and the appellant has standing in this matter. Essentially, this evening we will give Brian Daggett enough time to present the information that he wants to present without any interruption. Then the Board and any interested party will be able ask questions. Questions will go through the Chair. Corey Fortin will then present the information he has. The appellant, interested parties and the Board will have the opportunity, again through the Chair, to ask any questions. Finally, that will be followed by the opportunity to refute or rebut any statement that was made throughout the hearing.

Lowell Freiman asked Brian Daggett to take the time he needs to present the information that he thinks substantiates why this building permit should have been granted and not denied. Brian stated that first and foremost, Bob Temple gave him a building permit which was approved May 30, 2017. The permit expired. Brian went to renew the permit, without any changes, and was told that because of the time lapse it needed to be resubmitted. Brian did his best not to change anything and he was told it had to go before the DEP. DEP got involved, Corey Fortin gave him the contact information. Brian reached out to them and DEP approved the permit. The information went back to Corey and it was denied. To Brian's knowledge there haven't been any changes in the laws since it was originally approved back in 2017. One of the reasons for denial was the usable space on the lot which the rule is 20%. Brian is actually using ½ of the 20%. Also, the height restriction, Corey couldn't come up with that information as to what is an allowable height. It was approved by the previous Code Enforcement Officer. The square footage, is a grandfathered lot. A grandfathered lot allows you liberties and it's clearly pointed out what is allowed to be done with a grandfathered lot; you can expand it up to 30%. The

Maine Shoreland Zoning book is a publication that the State of Maine produces for the layman to understand the codes and rules and regulations to abide by. It has a demonstration of 1000 square foot building that can be expanded up to 1500. In the end when you have a 1500 square foot structure 500 feet represents that 30% increase, page 31 in the handbook. It's not overly complicated and it was an approved permit back in 2017 with no law changes between now and then.

Peter Drum confirmed the date of the previous permit – May 30, 2017. Lowell Freiman asked Brian Daggett if he had anything else to add. Brian Daggett stated he did not. Norman Casas asked what the proposed height of the new structure is. Brian stated 26 feet, guessing the current height is around 20 feet to the peak. Lowell asked how far back from the shoreline is the structure. Brian stated 35 feet, a non-compliant structure but grandfathered. The expansion of the new structure is going to be moving in a direction further away from the protected resource (back from the shoreline). It's being rebuilt and the original part is staying where it is. The lot is too small. The lot is a grandfathered lot which allows you these liberties. No one is disputing that it's a grandfathered lot built back in the late 50's. A grandfathered building can be expanded by 33%. Norman asked what wall will be retained. Brian stated, as in the permit, the wall closest to the Grinnell's property. Bob deGroff asked about the floor plan, if it will be the same as it is now. Brian stated the existing plan is 20' X 30' the new plan is 30' X 24' (expanding by 4 feet in width) which doesn't exceed the 33%. Brian changed the direction of the ridge so that is what's causing it to go higher. Corey Fortin stated it's currently on posts. Bob asked how close will the structure be to the access road. Brian stated 35 feet set back from in front of the deck, the deck, 24 feet of building and whatever is left is the distance between there and the road. It had been approved to put this on a foundation but as Corey stated it's on posts currently. Melissa Maker, Brian's business partner, stated that when they got their permit by rule from DEP they were very specific that 35 feet has to remain which is to the edge of the deck and not the building. That is the limit of how far away they can be. Peter asked Brian if he did a calculation of the lot coverage (the lot is 90 X 100 = 9000 square feet; the allowable coverage is 20% = 1800 square feet). Peter asked what Brian included in the lot coverage as structures (outbuilding which, in the current plan, is 10 X 12 which is allowed to be taken into consideration as an existing structure instead of grandfathered in the calculation of the addition. Brian said it doesn't matter; 120 square feet there and then take the structure which is 30 X 24 = 720 square feet total 840 which is well under the 1800 allowable square footage coverage for the non-vegetative coverage). Peter asked if there is a gravel driveway on the property. Brian stated there is a right of way, to call it gravel would be a stretch, it's partially grassed over, people drive over it, park there that's what kills the grass. Brian hasn't done anything to make it a driveway, there's no real benefit. Norman asked if it's grassed over it must not be impervious. Brian said it not impervious, the water can easily drain through the grass and gravel. Cathy Blake asked if there is indoor plumbing and a well. Brian stated it has indoor plumbing, a septic but no well. Brian pulls water from the lake. He was told by Hatch Well Drilling that he could drill a well but would have to extend the length of the steel casing with additional fees.

Lowell Freiman asked Corey Fortin to give a description about his decision and how he made his determinations about the nature of the permit, what information was provided to him and what information he provided to the appellant. Corey stated that on one of the drawings that was submitted by Brian Daggett it states that there is a driveway/boat launch that's 10' X 100' which

was taken into consideration with the 20% non-vegetated area since a driveway is normally gravel and not vegetated. In the other non-vegetated area he's allowed 1800 square feet and Corey got his numbers by the size of the dwelling, decks, shed and the driveway/boat launch. Corey's math came out to 1889 square feet which does not include the stairs. He's not missing by much but from Corey's point of view it's just over the 20% non-vegetated area. On other points, if you demolish more than 50% of the structures value, per state statute 38 MRSA 439A 4-A, he has to bring it into a more conforming position on the lot. The minimum setback for the rear lot line would be 10 feet to meet our minimum requirements in the Shoreland Zone. There is definitely room to move the structure back if he wants to take more than 50% of the structures value and re-work it. For the height, going to the same state statute as stated above, setback requirements – this was all generated 11/18/2021 – State of Maine not Washington: for structures located less than 75 feet from the normal high water line of a water body or upland ledge of a wetland the maximum combined total footprint for all structures may not be expanded to a size greater than 1000 square feet or 30% larger than the footprint existed 1/01/1989 whichever is greater. The big problem that Corey saw from the State of Maine Shoreland Zoning DEP in the state statute – the maximum height of any structure within 75 feet may not be made greater than 20 feet or the height of the existing structure whichever is greater. Per the plans, from Brian Daggett, he's asking to go 29 ½ feet high. Lowell Freiman confirmed that all of Corey's information was conveyed to Brian through emails and other forms. Corey stated he took bits and pieces out of the statutes, not sending the full statute because he tried to only send what was relevant to his structure to try to make it as simple as possible. Corey also took pieces out of the Washington Shoreland Zoning Land Use relaying everything to Brian as best as he could.

Peter Drum asked Lowell Freiman, Chair, if he could ask the appellant a clarifying question. Permission granted. Peter said to Brian Daggett that on his site plan it shows the driveway/boat launch. Is it your testimony that that's actually vegetative and there isn't gravel in that? Brian stated he's sure there is gravel actually in it, mixed. That entire area is very gravelly but it's not really a place he's maintaining as an addressed gravel driveway. It's all infested in weeds and grass; the whole lawn is basically weeds and grass. The predecessor of the property at one point had pavement near the water's edge which is completely crumbled and falling apart; chunks of it is unsightly. Peter stated that Brian hit on the exact problem with the way the statute does this. Case law says gravel driveways are considered to be non-permeable. DEP says it really doesn't do that. At some point when you have enough top soil and weeds mixed in with the gravel. The question is when that changes over happen which is a problem in terms of determining permeable vs non-permeable. Looking at the application the Board needs to decide whether it was incorrectly decided based on the application. Peter asked for site pictures, he had seen some. Lowell asked Corey, at what point did he realize that some of the laws were more stringent perhaps than what the town was requiring, sounds like some of these are fairly new. Is that correct? Corey said yes, the height limits are new as of 11/18/2021 but in the Washington Land Use Ordinance after the performance review space and bulk standards Section F subsection 7 – any repair, replacement or reconstruction of 50% or more of a non-conforming structure within one year shall require the approval of the Planning Board. When 50% or more of a structure is repaired or replaced within one year alternatives for eliminating or reducing the non-conforming features shall be considered as set forth in Article Non-conformance. In the Shoreland Limited Residential District – if the person is doing major reconstruction of a non-conforming structure it may be an opportunity to bring the structure into conformance. Ex: An

old camp falling down may be rebuilt but instead of being rebuilt on the current site which is 25 or 30 feet from the water it could be rebuilt further back. This will eliminate a loophole that allows essentially new construction to occur without following current building standards in the Shoreland Limited Residential District. Lowell asked if Corey estimation were that it would be more than 50% reconstruction. Corey stated he recommended that Brian get an engineer in on it and specifically say what 50% would be. In Corey's opinion, keeping one wall and taking it off posts seems like it would be more than 50%. Lowell confirmed that the person from DEP Shoreland Zoning was clear in saying that there were some violations of zoning laws as currently written from the state. Corey stated that's where he got the more updated information that was passed last year. He said definitely the height and if you're taking 50% of the value it needs to be pushed back which goes along with our Land Use Ordinance. Corey confirmed, to Peter, that Brian wants to demolish everything except one wall. Lowell asked Corey if he had any additional information. Corey did not. There were no questions for Corey.

Peter Drum stated to Lowell Freiman, Chair that he would discuss the ordinance and give his legal advice with the Board in an Executive Session. Lowell Freiman moved to go into executive session at 7:55pm, Norman Casas seconded, all in favor (5-0) Out of executive session at 8:15pm.

Peter Drum stated as he looks at Brian Daggett's application it seems that Corey Fortin's decision was based on 3 issues. Peter is not sure if the Board of Appeals has any other issues they are going to raise but at a minimum it seems that these 3 represent the reason for denial. Peter asked Corey and Brian to let him know if this is correct.

1. Was the lot coverage as depicted on the application consistent with the 20% lot coverage limit?
2. Would not more than 50% of the structures value be removed during the project?
3. Would the structure depicted in the application exceed the maximum height limit in the lot?

Sarah Calland rejoined the meeting via ZOOM when meeting reconvened.

Jim Kearny moved to close public hearing to go through discussion, Norman Casas seconded, all in favor (5-0). Lowell Freiman stated the Board will go through the items one at a time, separately affirm, modify, remand or overturn the denial of the permit. After discussion, vote up or down and make a decision on the entire permit.

Brian Daggett stated that talking about the 10 X 100 foot strip of land that causes the permit to exceed by 80 feet he would rototill or whatever and put soil so it's definitely grass and not something that water runs off. Peter Drum stated that the Board of Appeals has to hear the appeal based on the application that was presented. If this is denied, you can come back and say, this is what I'm going to do to make this compliant and you would probably get a different decision.

Peter Drum wants the Board to vote on the standard. If you agree with the phrasing of the way that it seemed to be revealed in Corey's written decision, they way Peter would introduce it would be "I move that the lot coverage as depicted in the application exceeded or did not exceed the 20% lot coverage limit", depending on how you want to consider the question.

Peter Drum moved that the lot coverage as depicted on the application exceeded the 20% lot coverage limit, so moved by Norman Casas, Jim Kearny seconded. Discussion: Bob deGroff asked if this does away with the driveway/boat launch. Peter said no it does not do away with the driveway/boat launch, it goes by what Corey was presented exceeded the limit allowed by the ordinance. Norman confirmed that an affirmative vote is in favor of the Code Enforcement Officer. All in favor of affirming this vote (5-0)

Peter Drum moved that more than 50% of the structures value be removed during the project as described, so moved by Norman Casas, Jim Kearny seconded. Discussion: Jim stated, with only one wall left standing that it's appropriate to suggest that more than 50% of the value would be removed. Lowell Freiman concurred with that as well, not seeing it any other way. All in favor of affirming this vote (5-0)

Peter Drum moved that the structure depicted in the application exceeds the maximum height limit allowed, so moved by Norman Casas, Bob deGroff seconded. Discussion: Norman stated that there was no indication of the original height of the structure was that Corey Fortin could base anything on. Jim Kearny stated that this part of the application is incomplete. Lowell stated that it can't be higher than 20 feet unless you know what the old structure was. The application stated the new structure would be 29 ½ feet in height. All in favor of affirming this vote (5-0)

Norman Casas moved to affirm the Code Enforcement Officer's denial of the permit to Brian Daggett based on the three items voted on, Bob deGroff seconded. All in favor (5-0)

Peter Drum stated he will do a written decision based on the votes for the Appeals Board to sign and then provide it to the appellant.

Lowell Freiman stated to Brian Daggett to move forward he could go to the Planning Board for input from them. Peter Drum also stated a few different options, not giving legal advice, could bring another application and work on the three issues voted on. You could bring a Variance Appeal to the Board of Appeals on those three subjects. This is what you could do under the ordinance.

Melissa Maker asked Peter Drum if they could bring their legal council in after they receive the written decision. Peter stated they could and has a right to appeal to Superior Court.

Sarah Calland had a chance to speak about the future of Washington Pond.

Meeting adjourned at 8:20pm.

Respectfully submitted,

Mary Anderson