

York Board of Appeals Minutes  
August 10, 2022

Joe Carr called the meeting to order at 7:00p.m.

**Attendees:** Joe Carr, Michelle Marean, Michael Swant, Paul Salacain, Mary Daun and Matt Lovo.

**1. FINDINGS OF FACT OF MEETING Of July 27, 2022:**

- a. M. Swant made a motion to accept the Finding of Facts and Minutes as written.  
Seconded by M. Daun.
- b. All members are in favor. Motion passes.

**2. MATTER UNDER CONSIDERATION; JAMES EATON & LOUISE LITTLEFIELD, 58 BIRCH HILL ROAD, YORK ME 03909 request an Administrative Appeal regarding noise level on 60 Birch Hill Road. Map 85, Lot 24A.**

- a. M. Swant made a motion to approve the standing and timeliness of the appeal.  
Seconded by P. Salacain.
  - i. All members in favor. Motion passes.
- b. Pat Bedard is the attorney representing James Eaton and Louise Littlefield.
- c. P. Bedard said there was a permit granted to Matthew Sheehan (owner of 60 Birch Hill Road) that allows him to conduct a home business and one thing that it involves has been an issue. They believe it was granted to him in error of allowing him to cut wood on the property with a chainsaw.
- d. The home is in the Gen 1 zone in York and there is commercial woodcutting that has been allowed for Mr. Sheehan, but the problem is the noise ordinance. In the Zoning Ordinance; 18-A.2G "With the respect of the application review process, it's the applicant's burden to demonstrate compliance with the requirements of the zoning ordinance". Under 18-A.4 under decisions "The Code Enforcement Officer shall deny an application that has not demonstrated in full compliance with the substantive requirements of this ORdinance and all other applicable Town codes." Regarding the noise ordinance violation; Article 19 & 19.1 states "any violation of this Ordinance shall be deemed to be a nuisance. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance." Under 6.1.2 Supplemental Use Requirements; it states "Noise shall be limited in a manner consistent with the Town Noise Ordinance." Then, it brings us to the Town Noise Ordinance under 2.1B it says: "In all other zones, relative increases shall not exceed 5 decibels." It also says "The maximum permissible sound pressure level of any continuous, regular, or frequent sound of source shall be limited as follows: between 7:00 a.m. and 10:00 p.m. - 60 decibels." It has been going back and forth between Amber Harrison (Head of the Code Office) and Police about who is to enforce this. According to the ordinance the police should, but if the Code Office issued a permit with a chainsaw and it becomes too loud, then the Code Office should handle it.

- e. On May 11, 2022 the Police went out and said without the chainsaw the decibels are about 43-48 and with the chainsaw it was at 67-77 decibels, which is a violation. On June 9, 2022 the Police went out again and said without the chainsaw the decibels were at 43-48 decibels and with the chainsaw it was at 57 decibels. On June 21, 2022 a neighbor did a decibel read and it was at 71 and at one point it got to 85 decibels. What they are looking to do is to overturn part of the permit regarding chainsaw usage.
- f. James Eaton said they built their house and have lived there since 1988. He stated that Mr. Sheehan started his Haying, landscaping, firewood and snow removal business without a permit. Louis Littlefield stated that they have horses and the noise from the chainsaw has disrupted the horses and their lives. There is a fence separating the properties and a blanket was used to try and reduce the noise, that didn't work and Mr. Sheehan planted trees to help with the noise but that did not work as well.
- g. Heather Ross (Code Enforcement) said that a business permit was permitted on May 5, 2022 specifically for no extra employees on site nor landscaping materials brought in to the site. The traffic assessment was waved and Mr. Sheehan would have a site visit to inspect for Article 6.1.8. Code went to the property about a week ago and saw more vegetation needed on the property and he was willing to comply with that. On July 7, 2022 the permit was conditioned to allow the hours of the commercial operation from 7 a.m to 10 p.m. in order to be compliant with the noise ordinance.
- h. M. Swant said that on the application, building permit and use permit are both checked off and asked H. Ross what the permit is and H. Ross said it's a use permit because that what the construction activity described is used for the property.
- i. P. Salacain asked how Code knows that the ordinance for setbacks and screening were not met? H. Ross said they normally give them a time period to comply with that. This one just has a note for a visitation for the vegetation buffer check back per Article 6.1.8 and only some of those have been completed.
- j. M. Swant said he suspects there should be no confusion in the Code Department that enforces ordinance 6.1.8.3. The Code Office would enforce the ordinance and H. Ross agreed and said the Code Office is given the legal ability to ensure the ordinance but the question is if it is still a question if this was a violation or not. M. Swant said regarding vegetation, the ordinance states that "There should be a dense evergreen head 6 ft or more in height." and is assuming the Code Office will enforce that.
- k. Matthew Sheehan said that he has had the firewood business for the last 10 years and never knew that he needed a permit for the business as well as the noise never has been an issue until he heard about it from Code Enforcement about obtaining the proper permit. After that he went and applied for the permit and did what he needed to do. Time was given to him to comply with the ordinance regarding the vegetation buffer, fences etc. due to finance and he has until May 2, 2023 to comply. The blankets on the fence are noise absorbing

blankets. There have been about 47 trees planted and needed to be redone a few times due to deer. The mufflers have been changed on his chainsaw to help with the noise.. This neighborhood tends to be on the noisy side so when measuring decibels, they tend to be louder because of other noise going on and not just from his chainsaw.

- I. P. Salacain asked if his firewood business has always been on this site and M. Sheehan said yes, there is nowhere else in Town where he can cut for a hefty price. He has checked with 3 abutter neighbors about his cutting and they do not have a problem with it. He stated that he never cuts for more than an hour and will spend the rest of the day splitting. Sometimes as well when he is cutting wood for himself, the police have been called.
  - m. Kathy Borderlow (a neighbor) believes that he has not had his business for 10 years. Over time it has gone on for longer and has gotten louder.
  - n. M. Swant made a motion to grant the administrative appeal of James Eaton and Louis Littlefield, 58 Birch Hill Road, in that the non-residential use of property at 60 Birch Hill Road requires noise mitigation standards as set forth in 6.1.8.3. We direct the York Code Office to immediately issue a stop work order for the use of chainsaws or any other implement that produces noise in excess of that permitted in the York Noise Ordinance. Said stop work order to remain in effect until such time that the Code Office can verify complete compliance with the noise mitigation standards of 6.1.8.3. Seconded by M. Lovo.
    - i. All members were in favor. Motion passes 5-0.
3. **MATTER UNDER CONSIDERATION; VERTEK TOWERS LLC, 2 COMMERCIAL STREET, SHARON MA 02067** request a General Variance. Property in question is located at 162 York Street, York ME 03909. Map 49, Lot 57.
- a. M. Marean cannot partake with this matter due to conflict.
  - b. M. Swant said regarding the Ordinance 18.8.2.3 the Board cannot grant the general variance. It states that “A variance shall not be granted to permit a use or structure otherwise prohibited”. Here they are talking about a structure not in a zone that they agreed were zones for wireless communication facilities could be placed in. J. Carr and the Board agreed about reaching out to the Town Council. M. Swant asked what format we are looking for from the Town Council and J. Carr asked whether we can grant a variance in this situation.
  - c. M. Daun made a motion to continue this matter of Vertek Towers until we hear the Town Council’s opinion on whether or not the Board of Appeals has the authority to approve or disapprove this case. The matter will be discussed at the September 14, 2022 meeting. Seconded by P. Salacain.
    - i. Majority of members are in favor. Motion passes 4-1.
4. **MATTER UNDER CONSIDERATION; JOSHUA AND BRIANA OUELLETTE, 112A GARRISON HILL ROAD, DOVER NH 03820** request a Minor Dimensional Variance. Property in question is located at 7 Josiah Currier Road, York ME 03909. Map 96, Lot 154.

- a. J. Carr mentioned the first application is for a general variance and this application is for a minor dimensional variance and asked what that change is for. J. Ouellette said the first one was for the house because the house was not reaching set backs and they just spent a lot of money adjusting the lot line with a neighbor to take care of that problem. Now they are requesting the minor dimensional variance for the barn foundation so they would not have to pay \$10,000 to remove it. Right now it is at 75% per the 80% requirement. Their old builder led them wrong with locations when building the house and the barn. J. Carr said with the minor dimensional variance, we can't vary less than 80% of the original required item. We could grant 10 ft relief and make it 40 ft but we can't make it 37 ft.
- b. J. Carr said regarding a minor dimensional variance there are certain requirements (7 standards) they need to meet regarding 18.8.2.10B and asked if those were met. Briana Ouellette said they meet all of them except for B. M. Swant said there are 7 other standards that must be met in order to grant the minor dimensional variance.
- c. B. Ouellette asked if they could just bury it with the mind set that it's not there and cannot be used. M. Swant said regarding 18.8.2.10.B.4 states "The practical difficulty is not the result of action taken by the petitioner or a prior owner;" The action of the petitioner was an insulation of the foundation in question. 18.8.2.10.B.5 states "No other feasible alternative to a variance is available to the petitioner." The only feasible option is to remove it in the correct position, so those 2 cannot be met.
- d. J. Carr asked Heather Ross if they were to bury this, if they would still be in violation and she said yeah. Technically the definition of a structure are items on or in the ground. So they would have to cut it back in order to bury it.
- e. M. Swant made a motion to deny the request for a minor dimensional variance in that the Board finds that the standards article 18.8.2.10 cannot be met.  
Seconded by P. Salacain.
  - i. All members were in favor. Motion passes.

**5. MATTER UNDER CONSIDERATION; STEVEN AND DENISE TREVOR, 2**

BEACHSIDE COURT, YORK ME 03909 request an Administrative Appeal of placement of shed on 19 Morningside Drive, York ME 03909. Map 3, Lot 37.

- a. Steve Trevor stated that they did not find out about the shed because it was not in their neighbors plan for when they plan on rebuilding. He said that Amber Harrison told him to file the appeal and that the timeliness would be based on the date they met with her and they would have 30 days after that date. J. Carr asked H. Ross what Amber Harrison would have meant by that and she said her and Amber talked about how it would date back to the issuance of the permit which was January 25, 2022. S. Trevor said they didn't get notified about the permit when it was issued. The real issue with the shed is that it is going on his water line.

- b. Regarding timeliness and standing, the Board does not feel this matter meets timeliness.
- c. M. Lovo made a motion to deny on grounds of not meeting timeliness. Seconded by P. Salacain
- d. All members are in favor. Motion passes with a 5-0 vote.

6. **MATTER UNDER CONSIDERATION; PATRICIA M. CALLAHAN, 25 HASKELL WAY, YORK ME 03909** requests an Administrative Appeal concerning a storm drain on 17 Eastern Avenue, York ME 03909. Map 36, Lot 65C.

- a. This matter is a continuance from the July 27, 2022 meeting.
- b. Regarding timeliness and standing ; they found an email from Amber Harrison dated April 5, 2022. This is within the time frame so they can hear this on this decision only, that being in Amber's email she wrote "At this time, I'm making the decision to cancel the meeting on Thursday, April 14. As I've said before, this issue is rather time consuming and we have researched both onsite and as well as in the property files to come to the determination that we will not be asking anyone to remove existing connections to Town owned stormwater infrastructure (which the catch basin between 17 and 21 Eastern Avenue is). Routine maintenance is occurring alongside the Anchorage from wetlands on Haskell (east side) to the Atlantic." All the Board agrees that this is the section that they can hear.
- c. M. Swant made a motion to accept the appeal of the April 5, 2022 determination from Code Officer Amber Harrison. Seconded by M. Daun.
  - i. All members are in favor. Motion passes.
- d. P. Callahan said the catch basin from 17 Eastern Ave to 21 Eastern Ave was installed over 20 years ago. They do not have records of the installation on the permitting of it. Code has yet to provide them with the evidence that the catch basin was installed 20 years ago which seems to be anecdotal. The contractor who worked on 17 Eastern Ave is doubtful that this was the same contractor who told Code that he was only going to replace one pipe and take down 2 small trees. Her photos show how much the drainage project was with multiple pipes, a new drip edge and the elimination of a holding pool. If Code is implying that the permit issued in 2008 to 39 Mitchell somehow covers 17 Eastern Ave as well as 21 Eastern, they are misinterpreting this document. The 2008 permit marks the area as a stream in a protection zone and Code stated the water must not be diverted. There are photos taken in October 2012 that show the property owners were issuing their own litigation without asking for a permit. In the photos there is heavy equipment that is not property of the DPW, you can see the rockwall boundary with a newly placed catch basin surrounded by stones on 17 Eastern Ave as well as other stones around to attempt to blend the work in. No permit was found for this work. She believes Code failed to issue another permit for the new drainage work being done at 17 Eastern Ave. They say it was a kind of extension of the drainage project that was permitted in 2016, which is also in a wetland zone. The inland wetland ordinance; particularly 2.1.B, 3.1 and 4.4 all

should have been applied. Code should not have allowed this without reexamining the drainage issue. Her assumption that this is a private litigation project by land owners is supported by a document she found in the file for 17 Eastern Ave. Noone did a drainage study account for properties beyond 17 Eastern Ave which should have been a requirement. Code has said they will not have the pipe removed and DPW has updated the map (BS235) and lists the basin as private.

- e. H. Ross said this is going back to a drainage system that was installed over 20 years ago and is a private drainage system, not Town maintained. P. Callahan said she believes it was put in in 2012 because back in 2001 there was nothing there.
- f. M. Swant asked about the determination that A. Harrison made that they will not be asking to remove existing connections to Town owned stormwater infrastructure? H. Ross said A. Harrison had conversations with the DPW and that had been installed approximately 20 years ago so they weren't going to have anyone disconnect from the system.
- g. H. Ross said there is a State Law that discusses surface water and it sounds like this is part of the issue. The State law is under Title 17 chapter 91 subsection 3 2808 states "Unreasonable use of land that results in the alter flow of surface water that unreasonably injures another's land or unreasonably interferes with a reasonable use of another's land is a nuisance any action under this section must be commenced within 3 years after the cause of the action." If so, this becomes a dispute between parties and a civil matter.
- h. Tom Casey (7 Haskell Way) has lived here for 43 years. People from Eastern Ave without any kind of permit are putting water into the Town drainage system and it's affecting them.
- i. H. Ross has an email addressing the drainage at 17 Eastern Ave and why the stop work order was removed that states "The owner hired an engineer to put in a drainage plan that compiled with the Town zoning ordinances and the storm water regulations. At that time the stop work order was removed. There is a copy of the approved design. DPW and Leslie (from Code) had incepted the drainage along Haskell way and after excessive research, it shows it's been there for 20 years. Work on 17 Eastern Ave. would prevent the inner minute surges of water that happen on Haskell."
- j. P. Salacain asked what the outcome would be if the appeal was to be approved and M. Daun said she feels like if the Board were to accept the appeal, then it's going to have Code disconnect the drainage. J. Lovo said that he thinks Code and DPW need to talk and figure out what's private and what's public.
- k. M. Lovo made a motion to deny the appeal. Seconded by P. Salacain.
  - i. All members are in favor. Motion Passes.

## 7. Code Business:

- a. Next meeting will be held on August 24, 2022.

**8. Adjourn:**

- a. M. Swant made a motion to adjourn. Seconded by M. Lovo.
- b. All members in favor.
- c. Meeting is adjourned at 9:25 p.m.