

BOARD OF APPEALS

July 25, 2018

7:00 PM

York Library

15 Long Sands Road, York ME 03909

Chairman Robert Lascelles called the meeting to order at 7:00 PM. Board Members present: David Woods and Michael Swant and Associate Members John Kraus, Victor Manougian and Britton Garon.

Board members not present Joe Carr and Leon Moulton.

Videotapes of the meeting are available in the Town Clerk's office for review.

1. **Matter Under Consideration:** Pamela Moody-Maxon, 159 Lupine Lane, Wells ME 04090 requests an Administrative Appeal in regards to a decision by the Town of York Code Enforcement Office concerning lot separation. The properties in question are located at 46 and 50 Logging Road, York ME, owned by Nina Warner, Map 10 Lots 28 and 28A in the RES-2 Zone.

Regular members Mr. Lascelles, Mr. Swant, Mr. Woods and Associate Members Ms. Garon and Mr. Manougian constitute a quorum and will be voting on this appeal.

Present: Pamela Moody-Maxon, real estate broker representing the property owner

Nina Warner, property owner

Amber Harrison, Town of York Code Enforcement Officer

Timeliness was discussed. The CEO's letter of denial was dated June 27, 2018 and the appeal was timely filed on July 13, 2018.

Standing was discussed. Mrs. Warner has standing as the owner of the property and authorized Ms. Moody-Maxon to represent her. Mr. Swant noted that the record should be corrected to read that "the appellant is Nina Warner represented by Pamela Moody-Maxon."

Mr. Kraus questioned the type of reverse mortgage and who has title to the property. There is an equity line of credit which became due upon the recent death of Mrs. Warner's husband. Mr. & Mrs. Warner have owned both properties since 1962 and Mrs. Warner has the deed. She has not deeded the property to anyone else.

The Board's jurisdiction is based on §5.2.1 of the Town's zoning ordinance as referenced in the CEO's letter of denial.

Ms. Moody-Maxon has researched the Town records back to 1960 and found that the property has always been treated as 2 parcels in tax bills and the Assessor's records. There was no zoning in the Town before 1971, and the Warners had acquired the property in 1962 with one structure at 46 Logging Road and another at #50. Under current zoning for RES-2, splitting the property would create two lots that do not meet the dimensional requirements. A current survey of the property is consistent with the Town records, tax map, tax bills and bills from the electric company. Ms. Moody-Maxon cited several recent cases where property was considered grandfathered non-conforming due to lot size.

Ms. Harrison noted that there is a single deed for a single lot, although there have always been separate tax bills. There is no building permit on file for either structure, and they were built before zoning.

There were no comments from members of the public. Mr. Lascelles closed the public hearing.

BOARD DISCUSSION


Mr. Lascelles noted that both dwellings have existed for a long time preceding zoning. Nothing in the ordinance prohibits the lot separation and Town Counsel concurred. In the case of Keith v. Saco River Commission, the properties had been "functionally divided" and operated that way. York ordinance §17.3.5 permits non-conforming lots to be conveyed separately or together. The Board would not be creating anything more non-conforming. The Board can find that this property was functionally divided and can legally be conveyed, and can grant the appeal. Mr. Manougian noted that the houses existed prior to the zoning ordinance, there

is no problem with abutters, and Ms. Harrison was required to base her decision on the current zoning ordinance. Ms. Garon agreed that the lots are already non-conforming. Mr. Swant said that Ms. Harrison interpreted the current ordinance correctly, but the Board can determine that §17.3.5 permits separate conveyances.

Motion by Ms. Garon, seconded by Mr. Swant, that the Administrative Appeal of Nina Warner of 50 Logging Road, York ME regarding properties located at 46 and 50 Logging Road, Map 10 Lots 28 and 28A be granted in that the Board finds under York Ordinance 17.3.5 that the lots in question are contiguous lots that have been functioning separately and are therefore able to be conveyed separately. Passed 5-0.

2. Code Office Business: None
3. Board of Appeals Business: None
4. Adjourn

Motion by Mr. Woods, seconded by Ms. Garon, to adjourn. Passed 5-0.

 8/21/2018

Robert Lascelles, Chairman

Board of Appeals