

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CARSC-AP-04-011

RICHARD CAYER,]
]
Plaintiff]
v.]
]
TOWN OF MADAWASKA,]
]
Defendant]
and]
]
ROGER COLLINS and GRETA COLLINS;]
DWAYNE W. COLLINS; DOUGLAS M.]
COLLINS; and DEAN R. COLLINS,]
]
Parties-in-Interest]

DECISION AND ORDER



This matter is before the Court on Plaintiff's Complaint for Review of Governmental Action filed pursuant to M.R.Civ.P. 80B. Final hearing was held on October 17, 2005. The Plaintiff appeared and was represented by counsel. The Town of Madawaska had previously indicated through counsel that it would not participate in these proceedings. The Parties-in-Interest did not appear.¹ Based upon the evidence in the Amended Record on Appeal, the Court FINDS and CONCLUDES as follows:

FACTS AND PROCEDURAL HISTORY

Plaintiff, Richard Cayer ("Cayer"), is a resident of the Town of Madawaska, and is the owner of a certain property located on the Chapel Road in the Town of Madawaska, Maine. Defendant, Town of Madawaska, is a municipal corporation located in Aroostook County, Maine. Parties-in-Interest, Roger and Greta Collins ("Collins"), are residents of the Town of Madawaska, Maine, and are former owners of a certain property located at 57 Chapel Road, Lot

¹ Dwayne Collins had previously appeared at earlier hearings on his own behalf and purporting to represent other family members although it appears that he is not a licensed attorney. He is, however, a joint owner of the Collins' property that is the subject of this appeal and accordingly he has been allowed to represent himself.

274 (Map 34, Lot 18) in the Town of Madawaska, Maine (the "Collins property"). Party-in-Interest, Dwayne W. Collins ("Collins"), is a resident of the Town of Madawaska, Maine, and is a joint tenant owner of the Collins property. Party-in-Interest, Douglas M. Collins ("Collins"), is a resident of the Town of Frenchville, Maine, and is a joint tenant owner the Collins property. Party-in-Interest, Dean R. Collins ("Collins"), is a resident of the Town of Madawaska, Maine, and is a joint tenant owner of the Collins property. The Collins property, the existing camp, and the proposed extension to the camp are located in the Rural Farm/Shoreland/Limited Residential zone, and are within 100 feet of the normal high water line of Long Lake, a great pond.

(Amended Record on Appeal at Tab 6). The Collins property abuts Cayer's property.

On September 20, 2004, Roger Collins filed a Land Use Permit Application seeking approval to construct a 7½-foot long by 36 foot wide by 7½-foot high extension to an existing camp located on the Collins property. (Amended Record on Appeal at Tab 6). On October 5, 2004, the Madawaska Board of Appeals (the "Board") conducted a public hearing on Collins' application to review and decide a 36-foot Northeasterly front lot line variance, a 39-foot Southeasterly front lot line variance, and a 25-foot Easterly lot line variance, for construction of a 7½ foot by 42-foot extension to the existing camp. (Amended Record on Appeal at Tab 3). At the October 5, 2004 public hearing, Roger Collins indicated that the variances were requested to allow expansion of the camp for the purpose of enlarging two bedrooms because Collins was selling his house and the existing bedrooms in the camp were too small. (Amended Record on Appeal at Tab 3, pg. 2).

Cayer was present at the October 5, 2004 public hearing and objected to the application on the grounds that (1) the structure should not be extended closer to his property, (2) the calculations used to determine the allowable 30% expansion were flawed, and (3) Collins had

not followed previous permits. (Amended Record on Appeal at Tab 3, pg. 3). The Board refused to consider any information related to past issues involving the property. (Amended Record on Appeal at Tab 3, pg. 3). After closing discussion on the application, the Board voted to grant the application with the stipulations that (1) the camp be re-measured to confirm the accuracy of the information presented to the Board, (2) that the applicant install appropriate vegetation to comply with the applicable regulations, and (3) that the volume of expansion comply with the applicable regulations. (Amended Record on Appeal at Tab 3, pg. 5-6).

The Board reconvened on November 8, 2004, and considered a revised application for a 37-foot Northeasterly front lot line variance and a 35-foot Southeasterly front lot line variance for construction of a 7½ foot by 36½-foot extension of the existing camp. (Amended Record on Appeal at Tab 2). At the November 8, 2004 public hearing, Cayer reiterated the objections he raised at the October 5, 2004 public hearing. (Amended Record on Appeal at Tab 2, pg. 4-5). Cayer also argued that the Town violated his civil rights by not allowing him to present information about the development history of the Collins property in opposition to the application and variance requests, and that Collins could not meet the variance criteria set forth in the Madawaska Shoreland Zoning Ordinance. (Amended Record on Appeal at Tab 2, pg. 4-5). After closing discussion, the Board voted to grant the revised application and variance requests. (Amended Record on Appeal at Tab 2, pg. 5). The Board did not issue any written findings of fact and conclusions of law. Instead, the Board issued a Notice of Decision for recording at the Registry of Deeds. (Amended Record on Appeal at Tab 1, 2, 3).

Cayer timely filed a Complaint for Review of Governmental Action on December 23, 2004. An Amended Complaint was filed on January 6, 2005, adding additional parties-in-interest. By letter, dated January 31, 2005, the Town of Madawaska notified the Court and the

parties that it was not going to participate in the proceedings on appeal. The Court issued a briefing schedule on December 23, 2004. After addressing a Motion for Trial of the Facts, Cayer submitted an Amended Record on Appeal on June 27, 2005, and the Court issued a second briefing schedule on June 29, 2005. Cayer filed his Brief on August 8, 2005. Dwayne Collins filed a Brief on behalf of the Parties-in-Interest on September 2, 2005.²

DISCUSSION

Standard of Review

When a zoning board of appeals acts as a tribunal of original jurisdiction serving as both the fact-finder and decision-maker, an appellate court reviews the decision of the board of appeals for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record. See Brackett v. Town of Rangeley, 2003 ME 109, ¶ 15, 831 A.2d 422, 427 (citing Yates v. Town of Southwest Harbor, 2001 ME 2, ¶ 10, 763 A.2d 1168, 1171). The interpretation of provisions of a zoning ordinance is a question of law for the courts and, as a result, such questions are reviewed *de novo*. See Brackett, 2003 ME 109 at ¶ 15, 831 A.2d at 427 (citing DeSomma v. Town of Casco, 2000 ME 113, ¶ 8, 755 A.2d 485, 487).

This scope of this court's authority to act is set forth in 5 M.R.S.A. § 11007(4) as follows:

4. Decision. The court may:
 - A. Affirm the decision of the agency;
 - B. Remand the case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary; or
 - C. Reverse or modify the decision if the administrative findings, inferences, conclusions are:
 - (1) In violation of constitutional or statutory provisions;

² Collins appended several exhibits to his Brief that are not included in the Amended Record on Appeal. Cayer, through counsel, objected to the submission of the exhibits in his Reply Brief. The Court strikes the exhibits not included in the record on appeal.

- (2) In excess of statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by bias or error of law;
- (5) Unsupported by substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion.

In this case, the Board acted as a tribunal of original jurisdiction because it conducted a *de novo* review and took evidence on the Collins's application for a land use permit and variance requests. (Amended Record on Appeal at Tabs 2, 3, 7-11). The Board granted the application and variance requests based upon its interpretation of the provisions of the Madawaska Shoreland Zoning Ordinance. Because the Board acted as a tribunal of original jurisdiction, and because the Board's approval was based on the interpretation of the provisions of the Ordinance, the Court reviews the Board's decision *de novo*.

Variance Requests

For the reasons set forth below, the Court finds that the Board's approval of the Collins's variance requests must be vacated and the permits issued on the basis of the Board's approval must be revoked because there is a complete absence of any evidence in the record demonstrating that Collins met any of the standards for obtaining a variance.

The Madawaska Board of Appeals derives its authority to grant variances from 30-A M.R.S.A. § 4353(4). Under 30-A M.R.S.A. § 4353(4), a board of appeals "may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause *undue hardship* (emphasis supplied)." As used in the statute, "undue hardship" means:

- A. The land in question cannot yield a reasonable return unless a variance is granted;
- B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

30-A M.R.S.A. § 4353(4)(A)-(D). Similarly, Section 16(G)(2)(a)(1) and (2) of the Madawaska Shoreland Zoning Ordinance provides that:

The Board of Appeals may grant a variance from a dimensional requirement, including, but not limited to, lot width, structure height, percentage of lot coverage, area, and setback requirements, only if the Board finds that:

(1) The proposed structure meets all the applicable provisions of Section 15, except for the specific provision which has created the non-conformity and from which relief is appropriate hereunder; and

(2) The strict application of the dimensional requirement would result in undue hardship.

Like the test established in 30-A M.R.S.A. § 4353(4), the test for determining undue hardship under Section 16(G)(2)(a)(2) of the Madawaska Shoreland Zoning Ordinance requires that “all of the following shall be met:

- (i) That the land in questions can not yield a reasonable economic return unless a variance is granted;
- (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (iii) That the granting of a variance will not alter the essential character of the locality; and
- (iv) That the hardship is not the result of action taken by the applicant or a prior owner.”

In order to exercise its authority to grant a variance, the Board is required under Maine law to make independent factual findings of “undue hardship.” See Yates v. Town of Southwest Harbor, 2001 ME 2, ¶ 13, 763 A.2d 1168, 1172. As the applicant requesting a variance, Collins had the burden of proving each of the four requirements for a variance. See Phaijah v. Town of Fayette, 2005 ME 20, ¶ 9, 866 A.2d 863, 866 (citing Perrin v. Town of Kittery, 591 A.2d 861, 863 (Me. 1991)). Thus, the Board’s decision to grant the Collins’s variance requests must be

vacated if there is no competent evidence in the record to support the Board's findings. See Phaiah, 2005 ME at ¶ 8, 866 A.2d at 866 (citing Thacker v. Konover Dev. Corp., 2003 ME 30, ¶ 8, 818 A.2d 1013, 1017).

The record in this case is devoid of any evidence supporting the Board's approval of the Collins's variance requests. There are no findings of fact or conclusions of law of any kind that address the application's compliance with Section 15 of the Madawaska Shoreland Zoning Ordinance, or whether Collins met the four criteria for obtaining a variance. The minutes of the October 5 and November 8, 2005 meetings of the Board do not contain any record that the Board ever considered or took evidence regarding the variance criteria. (Amended Record on Appeal at Tabs 2 and 3). The only evidence describing the basis for the Collins's variance requests is a statement by Roger Collins that the variances were needed because he was selling his house and needed to extend the two bedrooms in the camp to make them bigger. (Amended Record on Appeal at Tab 3, pg. 2).

Because there is a complete absence of any evidence in the record demonstrating that Collins met any of the standards for obtaining a variance, the Board's approval of the variance requests must be vacated and the permits issued on the basis of the Board's approval must be revoked.

Collins argues that the Board listened respectfully to the parties and conducted a "fair hearing". By definition, a hearing that is not faithful to the requirements of the law cannot be a "fair hearing." Collins offers no argument grounded in fact, legal principle or zoning ordinance provision to counter Cayer's arguments. On the basis of the record before the court, it appears that the law and the evidence offer Collins' position little support.

Allowable Expansion under the Madawaska Shoreland Zoning Ordinance

The Court finds that the Board erred in granting the Collins's request to expand the camp because the Board incorrectly included expansions of the camp made after January 1, 1989 in its baseline calculations used to determine the amount of allowable expansion permitted under Section 12(C)(1)(a) of the Madawaska Shoreland Zoning Ordinance. The Board also erred in conducting its proceedings on this issue by refusing to allow Cayer to present evidence describing the development history related to the Collins's property.

Section 12(C)(1)(a) of the Madawaska Shoreland Zoning Ordinance provides that:

After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume,¹³ by 30% or more, during the lifetime of the structure.

By its plain language, therefore, the Madawaska Shoreland Zoning Ordinance requires that the amount of allowable expansion be calculated based upon the amount of floor area or volume in existence before January 1, 1989. Consequently, any additions or expansions of a non-conforming structure after January 1, 1989 may not be included in the baseline calculation of floor area or volume used to determine the amount of expansion allowed pursuant to Section 12(C)(1)(a) of the Madawaska Shoreland Zoning Ordinance. If the calculations were based on the size of the floor area or the volume existing at the time of the permit application, including previously approved expansions, a property owner could obtain expansion permits of ever increasing size and ultimately could defeat the purpose of the ordinance on the installment plan.

The minutes of both meetings conducted by the Board confirm that the Board included 1995 expansions of the camp in the baseline calculation of the existing cubic volume used to

³ "Floor area" is defined in Section 17 of the Madawaska Shoreland Zoning Ordinance as "the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks." "Volume of a structure" is defined in Section 17 of the Madawaska Shoreland Zoning Ordinance as "the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof."

determine the amount of allowable expansion. (Amended Record on Appeal at Tab 2, pg. 3; Tab 3, pg. 4; and Tab 7). Because the Board included in its baseline calculation expansions that occurred after January 1, 1989, the Board's approval of the Collins's application to extend the camp is erroneous as a matter of law.

The Board's calculations of allowable expansion are also flawed because the Board refused to allow Cayer to present evidence describing the development history of the Collins property. In the absence of full and complete information about the development history of the property since January 1, 1989, the Board could not accurately determine the correct "existing floor area or volume" to use as a starting point from which to calculate the amount of expansion allowed under Section 12(C)(1)(a) of the Madawaska Shoreland Zoning Ordinance.

Because the Board erred in calculating the amount of allowable expansion permissible under Section 12(C)(1)(a) of the Madawaska Shoreland Zoning Ordinance, the Board's approval of the Collins's request to expand the camp must be vacated and the permits issued on the basis of the Board's approval must be revoked.

Sufficiency of the Board's Findings and Conclusions

It is well-settled law in Maine that a decision of an administrative board or agency cannot stand when the administrative board or agency "fails to make sufficient and clear findings of fact and such findings are necessary to judicial review." Widewaters Stillwater Co., LLC. v. Bangor Area Citizens Organized for Responsible Development, 2002 ME 27, ¶ 12, 790 A.2d 597, 602 (citing Christian Fellowship & Renewal Ctr. v. Town of Limington, 2001 ME 16 ¶¶ 14-18, 769 A.2d 834, 838-40). Such decisions cannot stand because "[m]eaningful judicial review of an agency decision is not possible without findings of fact sufficient to apprise the court of the decision's basis." Chapel Road Associates v. Town of Wells, 2001 ME 137, ¶ 10, 787 A.2d 137,

140. Without sufficient findings of fact, “a reviewing court cannot effectively determine if an agency’s decision is supported by the evidence, and there is a danger of ‘judicial usurpation of administrative functions.’” *Id.* (citing Christian Fellowship & Renewal Ctr., 2001 ME 16 ¶ 15, 769 A.2d at 839). (Citation omitted).

In addition to the requirement of findings and conclusions imposed by Maine law, Section 16(G)(3)(b)(4) of the Madawaska Shoreland Zoning Ordinance specifically requires the Board to “issue a written decision on all appeals ... within thirty five (35) days after the close of the hearing.” Moreover, all decisions of the Board must include “a statement of findings and conclusions as well as the basis therefore, and the appropriate order, relief or denial thereof.” See Madawaska Shoreland Zoning Ordinance at Section 16(G)(3)(b)(5).

In this case, the Board did not issue a written decision and it did not make any findings of fact or conclusions of law of any kind. Instead, the Board simply issued a “Notice of Decision” which was recorded in the Northern Division of the Aroostook County Registry of Deeds. (Administrative Record at Tab 1). The Notice of Decision contains no findings of fact or conclusions of law and does not meet the requirements imposed by Maine law and the Madawaska Shoreland Zoning Ordinance. Because the Board failed to issue a decision containing adequate findings of fact and conclusions of law, the Board’s approval of the Collins’s application and variance requests cannot stand. Accordingly, the Board’s approval must be vacated; the permits issued on the basis of the Board’s approval must be revoked and pursuant to 5 M.R.S.A. §11007 (4), the matter is remanded back to the Board to conduct a further hearing on the Collins’ permit application. Because the Board did not consider nor did it make any findings regarding the “floor area or volume” of the Collins property on January 1, 1989, this court cannot determine whether the expansion limitation would be exceeded or not.

Therefore, in conducting its hearing on remand, the Board shall receive evidence and determine the "floor area or volume" of the Collins' structure as of January 1, 1989 and then make its findings of fact and conclusions of law in accordance with the controlling principles of law as indicated herein.

CONCLUSION

For the reasons discussed above, the decision of the Town of Madawaska Board of Appeals granting the application and variance requests submitted by the Parties-in-Interest is VACATED. This matter is remanded to the Madawaska Board of Appeals with instructions to (1) vacate the land use permit and variances granted to the Parties-in-Interest; (2) record an appropriate notice in the Northern Division of the Aroostook County Registry of Deeds indicating that the variances granted on November 8, 2004 have been vacated and are no longer valid; and (3) conduct a hearing de novo on the Collins' permit application according to the principles of law set forth herein.

Dated: October 25, 2005


E. Allen Hunter
JUSTICE, SUPERIOR COURT