

**Minutes**  
**Kennebunkport Zoning Board of Appeals**  
**32 North Street, Village Fire Station**  
**May 6, 2013**

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, May 6, 2013. The meeting convened at 5:00 p.m. in the North Street Fire Station.

Four Members Present: Mr. Mark Messer (Chair), Dick Smith, Chris Perry, Paul Cadigan

Others Present: Attorney Brian Willing, representing ZBA, Attorneys Steven Hodsdon and Gordon Ayer, representing John Rinaldi and Brian Shaw, representing Code Enforcement Office

The meeting began at 5:00 and a quorum was established.

The Minutes from the April 22<sup>nd</sup> meeting were tabled because all members had not read them.

Attorneys Ayer and Hodsdon questioned the procedure by which the meeting originated.

Mr. Messer and Attorney Willing informed them that it was done appropriately.

Mr. Messer stated that he and other members had requested a meeting to reconsider the Board's decision of April 22 in which it reversed the building permit denial of 12-27-12 by Mr. Shaw. The reasons were to see if there were any factual errors and/or misinterpretations of the Ordinance present on April 22<sup>nd</sup> in regards to the definition of the patio area and the status of the structure's nonconformity.

A motion was made by Mr. Smith to reconsider its decision of April 22 and was seconded by Mr. Cadigan and it was agreed upon unanimously.

Mr. Perry stated that he had researched the information regarding the past construction of the home and patio and concluded that the application was an attempt to expand an illegally non-conforming structure into the river's setback zone.

Mr. Smith described the patio as "an incomplete structure with multiple voids for planting" and that we misapplied its meaning on April 22.

Mr. Cadigan discussed the implications of the 75' setback line possibly changing over the years, and asked Mr. Shaw about the procedure for measuring then and now.

Mr. Shaw stated that a horizontal line is used today, by surveyors. The point from which measurement is taken has changed from edge of water to 7 ft. elevation. He did not know if that particular setback had increased, decreased, or stayed the same as result of the change in measurement standard over time.

Mr. Perry compared two site plans/building plans to establish that the house currently is not where it was originally intended to be. The southerly lot line of the property was used as a standard to compare the two locations.

Public Hearing: No comments.

Attorney Ayer discussed how setback standards have changed over time. He pointed out the location of the house as appropriately situated from a plan done by Converse.

Mr. Shaw discussed how the original plan had a building envelope which showed no patio planned. On another drawing there was a dotted line area indicating a patio which was outside the buildable area.

Mr. Messer asked Mr. Shaw if there had been river bank erosion over time which would have impacted setback.

Mr. Shaw stated that it was not relevant; the original house was not built within the 75' setback.

Attorney Ayer presented a plan done by Ober, and distributed 6 photographs of the construction of the patio. He asked Mr. Shaw questions and was asked by Mr. Messer to discontinue direction questions to other than the Board. Attorney Ayer questioned the procedures of the Board.

Attorney Hodsdon discussed the Bruckler survey of 2008 and indicated that it shows the house within the 75' setback.

Mr. Perry replied that the lines were drawn incorrectly and that the southerly lot line which is established indicates otherwise.

Mr. Messer asked the applicant's representatives for any other evidence, and Attorney Hodsdon stated that there was none.

Mr. Messer indicated that the Board has moved from a focus of defining the patio on April 22<sup>nd</sup> to addressing the non-conformity of the structures.

Mr. Perry questioned the Board's task: Address Mr. Shaw's denial or address our decision directly of April 22<sup>nd</sup>?

Mr. Messer suggested either reversing or confirming its decision of April 22<sup>nd</sup> ; the denial of Shaw would be implied.

Mr. Smith discussed the 1980 plan showing the terrace as a dotted reference line which indicates that it was not planned and that it was most likely not built then. Also, there are no dimensions and the outline is not repeated in the view depicting placement with regard to setback lines.

Mr. Cadigan emphasized that the structure does not align with the southerly lot line on the plans, and seems to have been mislocated. He believed there was a Certificate of Occupancy, but it's not the Board's task to address that. It was the Board's task to address the expansion of the patio.

Attorney Willing suggested that the Board analyze whether the terrace was permitted, and, if the Town was obligated to intervene, or determine if it is grandfathered.

Mr. Messer believed that the meaning of the area in question is not relevant in that no matter how it is defined, it is a structure, and a structure can be expanded by 30%.

Mr. Smith questioned whether or not there was a sufficient structure, such as a foundation, on which an expansion would be appropriate.

The Board decided to summarize the main facts agreed upon during the reconsideration:

1. The house was mislocated based on the plans in evidence regarding the building envelope.
2. It is beyond the Board's jurisdiction to address the illegal non-conformity of the house.
3. The plans for the patio lack dimensions, solid lines, and were not part of the original consideration when the building permit was approved in 1980.
4. The patio was not shown on the plans in a building envelope.
5. The southerly lot line serves as a constant as to where the house is.
6. The definition of the patio vs. deck vs. terrace terminology describing the area is not the critical issue to this decision of the Board

Mr. Smith made a motion for the Board to change its decision of April 22<sup>nd</sup>, which was seconded by Mr. Cadigan and approved unanimously.

Mr. Cadigan made a motion to uphold the denial of 12-27-12 by Mr. Shaw on other grounds that were not stated in his letter of denial; the area targeted for expansion is not a legally non-conforming structure and that it was not a part of the plan and permit of 1980. It was seconded by Mr. Smith and approved unanimously.

Attorneys Ayer and Hodsdon objected to the procedure and stated that the Board was not fair in its hearing.

The Board adjourned at 6:45p.m.

Mark Messer, Chairman