

**Town of North Yarmouth Zoning Board of Appeals
Notice of Decision for Administrative Appeal**

Date: March 22, 2023

To: Lincoln J. Merrill, Jr.
1572 North Road
North Yarmouth, ME 04097

David C. Comparetto
36 Cluff Road
North Yarmouth, ME 04097

Dear Mr. Merrill and Mr. Comparetto:

This is to inform you that the Zoning Board of Appeals (“Board”) acted on your administrative appeal at its meeting on March 22, 2023, and made the following findings of fact and conclusions of law.

A. Findings of Fact

1. The Appellants are: Lincoln J. Merrill Jr., who is the owner of the property located at 1572 North Road, which is identified as Assessor’s Tax Map 12, Lot 22; and David Comparetto, who is the owner of the property located at 36 Cluff Road, which is identified as Assessor’s Tax Map 13, Lot 6.
2. This appeal relates to a certain lot or parcel of land on Cluff Road, identified as Lot 13-B on Assessor’s Tax Map 13 (the “Property”).
3. The Appellants are challenging the following permits issued January 17, 2023, by the North Yarmouth Code Enforcement Officer (“CEO”) to Holly and Sydney Harrison regarding the Property:
 - a. Building and Land Use Permit (BP23-13), for the construction of a new 2,122 square-foot single-family house.
 - b. Subsurface Wastewater Disposal System Permit HHE-200 (PL23-11), for the installation of a new septic system designed for 360 gallons per day.
4. The Property is located in the Farm & Forest (“FF”) district, and is approximately 0.5 acres in size. The minimum lot size for a buildable lot in the FF district is 3 acres.
5. On December 19, 2022, Holly and Sydney Harrison (“Applicants”) filed a permit application for “SF new construction.” Included with the permit application was a copy of a warranty deed from Stephen Meehan and Thomas Meehan, Co-Trustees of The Dorothy Meehan Living Trust u/t/a April 19, 2017 to Sydney Harrison and William Graiver, dated December 1, 2022. The Applicants also filed a Subsurface Wastewater Disposal System permit application.

6. On February 13, 2023, Mr. Merrill submitted a complete application for administrative appeal, with several attachments (the "Appeal Documents"). On February 14, 2023, Mr. Comparetto filed a written statement to join in the appeal filed by Mr. Merrill.
7. The Board held a public hearing on the administrative appeal at its meeting held on March 8, 2023, with a quorum of four (4) Board members present: Paul Napolitano (Chair); Kevin Robinson (Secretary); Jim Briggs; and Mike Mallory, who is an alternate but was appointed as a regular member for this appeal. Pursuant to the Town of North Yarmouth Land Use Ordinance and 30-A M.R.S. § 2691(3)(C), the Board conducted a de novo review of this administrative appeal from the decision of the CEO to issue the permits in question.
8. Mr. Merrill appeared and offered testimony and oral argument on his own behalf and on behalf of Mr. Comparetto, who was not present. Testimony was also offered by the CEO, Ben Scipione, who submitted into the record a packet of additional documentary materials generally consisting of assessing records that indicate the Property is a grandfathered, buildable lot, and an e-mail from the prior CEO to that effect.
9. The Applicants were provided notice of the public hearing, but did not attend the meeting.

B. Conclusions of Law

1. Ordinance Provisions

The relevant provisions of the Town of North Yarmouth Land Use Ordinance ("LUO") are as follows:

LUO, Art. XII: defines "non-conforming lot" as "[a] single lot of record which, at the effective date of this ordinance or amendment of this ordinance, does not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or other similar lot requirements of the district in which it is located. It is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendment took effect."

LUO, Art. XII: defines "lot" as "[a]n area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a subdivision plan duly approved by the Planning Board and recorded in the Cumberland County Registry of Deeds."

LUO § 11.3(B)(1)(b)(1): "Lot of Record: [A] lot that exists as shown or described on a plat or deed in the records of the Cumberland County Registry of Deeds."

LUO § 2.5(A): "A non-conforming lot of record as of the effective date of this Ordinance (June 14, 2005) may be built upon, without the need for a variance, provided that all provisions of this Ordinance except lot area, lot width and/or lot frontage can be met."

LUO § 6.2(A): Authorizes the Board “to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance.”

2. Jurisdiction

Based on the above stated facts and the provisions of the LUO cited, the Board first concludes that it has jurisdiction over the appeal, which was filed within thirty (30) days of the CEO’s issuance of the permits in question.

3. Appellants’ Arguments

The Appellants raise two principal arguments in this appeal. First, they argue that the Property is not a non-conforming lot of record under the LUO, and therefore cannot be built upon. Second, they argue that there is a significant question as to the ownership of the Property such that the Applicants have failed to demonstrate that they have adequate right, title or interest to pursue a building permit.

On the first issue, in order to find that the Property is a buildable, non-conforming lot of record, the Board must find that the lot existed “with ascertainable boundaries established by deed or instrument of record” or was shown on a subdivision plan recorded in the Registry of Deeds, as of June 14, 2005.

The Board finds, based on the evidence in the administrative record, that the first recorded description of the Property was in the March 24, 2021 deed from Donald L. Cluff to the Royal River Conservation Trust, which is recorded in the Registry in Book 37976, Page 278 (“2021 Deed”). This deed is included in pages 15.1-15.5 of the Appeal Documents, includes a legal description of the triangular Property, and states that it is “depicted on a plan of land prepared by Owen Haskell, Inc. entitled ‘Compilation Survey at 48 Cluff Road, North Yarmouth, Maine’ dated March 3, 2021, to be recorded.” This survey plan was not included in the administrative record.

The Property was subsequently described in a deed dated December 1, 2022, from Stephen Meehan and Thomas Meehan, as Co-Trustees of The Dorothy Meehan Living Trust u/t/a April 19, 2017, to William Graiver and Sydney Harrison, which deed is recorded in the Registry in Book 39878, Page 84 (“2022 Deed”). The 2022 Deed is included at page 18.1 of the Appeal Documents, and also describes the triangular Property but with a slightly different legal description than the 2021 Deed.

At the public hearing, reference was also made to an older deed from William and Ann Richardson to John Young, dated June 25, 1858, which is recorded in the Registry at Book 287, Page 505 (“1858 Deed”). The 1858 Deed is included at page 5 of the Appeal Documents. However, the Board was not convinced that the 1858 Deed, which contains no metes and bounds description of the parcel, relates to the same parcel as described in the 2021 Deed or the 2022 Deed. The two more recent deeds contain full metes and bounds descriptions, and neither of them refers back to the 1858 Deed.

The Board concludes that the Property did not have ascertainable boundaries established by deed of record in the Registry, nor was shown on a subdivision plan of record in the Registry, prior to June 14, 2005, and, therefore, is not a non-conforming lot of record that can be built upon under Section 2.5(A) of the LUO. Having concluded that the Property does not meet the minimum lot size requirement applicable in the FF district, and is not a non-conforming lot of record under the LUO, the Board concludes that the CEO's decision was in error, and the Board does not need to reach Appellants' second argument regarding right, title or interest, which is moot.

C. Decision

By a vote of four (4) in favor and none opposed, the Board REVERSES the decision of the CEO to grant the permits (BP23-13 and PL23-11) to the Applicants, which was clearly contrary to specific provisions of the LUO. Such permits are void and of no further effect.

Any parties to this appeal who are aggrieved by this decision may file an appeal in the Superior Court within 45 days of the date of the vote on this decision.

Date: March 22, 2023 By: Paul Napolitano
Chair
Kevin Roberson
Member
Jim B...
Member
...
Member

cc: Ben Scipione, CEO