

Case # 468

APPROVED, with minor corrections DEC. 27, 2016

November 29, 2016

Sawyer Point Realty LLC

Present were Mark Howard, Alicia Gettman, Bob Theve, Tom Swift and Jim Cubeddu.

Mark opened the hearing with the particulars of an equitable waiver.

Atty. Richard Uchida representing the Luby's, the applicants. Mr Uchida gave the history of the property that the family bought in 1991. It is a .43 acre parcel with 125' of shore. It is a lot that was subdivided in 1959.

The applicants received a variance in 2008 to enclose a porch that infringed on the front setback of 50'. At the time a measurement was taken with a tape from the lake up an incline and through the existing building. They used a septic design plan and marked the 50' setback. In 2014 the property was surveyed by White Mountain Survey and discovered that the back side of the porch infringed by about 10' within the original variance. There was a building permit given in 1999 for a dormer off the front that sits back off the footprint of the cottage, no variance needed then per then Code Officer Senecal They would be willing to get an EW waiver if needed for that. It is part of the application. He showed photo's of the building and the 2014 plan. (Filed) The plan shows the purple line as the 2008 line, the blue line is the actual 50' line. The area between is what the equitable waiver is for. He described the photo's of the house, two of the pictures show the back of the house where the addition is. He also feels that they qualify for EW because the error was not discovered until the survey was done. It was not done in bad faith and not a misrepresentation of the law.

Mr Deitz filed a lawsuit against the applicant. Dietz felt the applicant knew they had built within the setback. Uchida said there was no attempt to hide anything they just got it wrong. There is no dimension in property value of any surrounding properties. There had been no complaints until the lawsuit. All have enjoyed their properties and no adverse use of the properties. The addition brings the house into conformity with others in the neighborhood and the cost would be prohibitive to remove the back of the house.

The 1999 dormer was no expansion of the footprint it went straight up, he showed pictures. It sits back from the roof overhang. They want to be thorough that is why they added it to the application.

David Braun, builder commented that at the time he used the septic plan as the plan, measured up the incline and through the house the best he could. It was the standards of the day and did the best he could.

Kristin Eldridge and appraiser from Meredith did a value analysis before and after the additions. She looked at the property next door from the applicants property, did not go on 41 Sawyer Point RD property. She felt there was no diminution in value to his property or anyone else's in the neighborhood. You cannot see applicants house unless you are in their driveway, Dietz house is barely visible. Their house does not obstruct any view of the lake for anyone. Her report is filed.

Bob Theve asked if she did a comparable to the Dietz property? Yes.

Atty Tierney acting for M/M Dietz passed out a large packet (filed). He felt they had not met the burden of proof that they didn't know this infringement prior to Survey. He noted that the septic plan showed the corner of the house was 24' from the lake. The building application said 35' for the 1999.

Bob T. asked what was the lake level then? Now vs. then? Did not know. The reason the survey was done was Mr Dietz had his driveway redone and the applicants felt he had infringed on their property so they hired White Mt Survey to do a formal property line survey.

Mark noted that the 1991 plan Tierney was showing was a contractors/builders plan with hand written notes and ideas. Jack Parsons brought up that Dietz had built a new house and had gotten an EW. Atty. Tierney replied that inches are different than 10'. He did not feel it was honest measuring mistake. They have built on the back of the porch. He felt it was a dimension in Mr Dietz property value because this now allows more use of the property with more people. Atty. Tierney's packet also had a letter from an appraiser, Mr Shea, who stated there was a diminution in value.

Bob asked if there was a detailed report? No, he had not performed a statistical report just an opinion. Tierney reiterated that the applicant absolutely knew what they were doing. Jim asked him to define absolute. He referred to the sworn court testimony. Tierney continued to talk about ignorance of facts. Tape measurement! The cost of removing is not the issue it's the cost to the town on letting it continue. He referred to Bacon vs Enfield. A shed over a propane tank. They believe the lot coverage is at 29% when the town only allows 20%.

Mr Dietz introduced himself and that 41 Sawyer Point Rd. is their legal residence even though they have a place in Boston and Florida, he felt that there is an increase in use, up to 12 people and because of that it does impact their value, more noise they like peace and quiet, more use of a septic that could impact his well etc. The lake is an asset and does not was more use etc. Cottage now year round. They did not give accurate information to the Town.

Mark asked why wait 7 years before bringing this forward? Dietz responded that he was not aware of what was going on at the time.

Jack Parsons noted to all that there is only 3 bedrooms in the house not 4 as Mr Dietz alluded to.

Gerry DeGeorge, a neighbor, spoke in favor of the waiver. The Luby's are only here about 4 months of the year and maybe grandchildren are here for a week, it's just the 2 of them most of the time. The DeGeorge's wrote a letter which is in the file. All had read it. Gerry noted that the Dietz family had torn down their existing cottage and had built a much larger home which needed a variance and then after it was built they also had to get an EW from the Town. The DeGeorge's did not complain at that time. They felt it was not any negative impact.

Bob asked Jack if others in the neighborhood are within setbacks? Jack did not know.

Atty. Uchida reiterated that the error was a good faith error not trying to get away with anything. The court ruling did not agree with Dietz and dismissed all but one of the allegations. The use is the same year after year, consistent number of people. One summer the Luby's father was here with them and had to have a space he could access easily for rest and sleep and he used that back room. He has since passed. The septic issue is not a board issue. There was never an attempt to misrepresent anything.

Braun commented that he used what was standard at the time and if had know he would have done it differently, never tried to deceive anyone. His reputation as a local builder would not have been good for him to lie.

No other comments.

Board proceeded with the four findings.

They will address both years 1999 and 2008

A: Violation was not noticed for 10 years or more. 1999 ok. 2008: No other survey until 2014. Jim remembers sitting on the 2008 variance and the issue was what was given for the setback. All agreed there is no violation.

B: Violation was not an outcome of ignorance of the law. Board felt it was a good faith error, no certified plan available and that Braun's testimony was important. All agreed it was a good faith error.

C: The physical or dimensional violation does not constitute a public or private nuisance. All agreed it does not.

D: The cost of correction far outweighs any public benefit. Mark noted that it was not a nuisance until 2014, and no benefit to owner or town to take it down. All agreed there is no obstruction.

The board concluded that the applicant met the 4 issues for both years therefore the Equitable Waiver is granted.

Hearing Adjourned

Jackie Rollins, Secretary.