



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

November 9, 2023

Board of Appeals
Town of Lyman
11 South Waterboro Road
Lyman, Maine 04002

RE: Paul & Amy Ala, Administrative Appeal of Notice of Violation; 296 Wadleigh Pond Road, Lyman (Map 27 Lot 18-3)

Dear Members of the Board of Appeals,

The Town of Lyman (Town) Code Enforcement Officer (CEO), Brenda Charland, forwarded the above referenced administrative appeal to the Department of Environmental Protection, Shoreland Zoning Division (Department) for comment. The lot is in the Town's Shoreland Zoned Limited Residential District. The Department reviewed the Notice of Violation (NOV) appeal application submitted by Paul and Amy Ala (Applicants) and submits the following comments regarding provisions of the Town's Shoreland Zoning Ordinance (Ordinance), for consideration by the Board of Appeals (Board).

Sheds located on this parcel were previously the subject of a Board hearing. On February 3, 1996, the prior owner of the parcel was issued a NOV regarding unpermitted sheds on the parcel. This NOV was appealed to the Board and on April 18, 1996, the Board determined the structures required permits and must meet setback requirements. The Board also denied a variance request to reduce the setbacks for the sheds. The CEO at the time subsequently requested the structures be removed since they could not be permitted.

On July 1, 1998, the Town issued a permit for an 8'x10' portable shed with no utilities to be located the same distance to the water as the house. Based on information in the Town's records this shed was located adjacent to the road. According to the CEO Town records do not contain a permit for the gazebo which is alleged to have started out as a canvas and metal pole tent and was replaced by a wood structure over time. Based on Town records the gazebo was located adjacent to the pond.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

After purchasing the parcel on January 15, 2019, the Applicant's submitted a permit application on April 2, 2019, to replace an existing shed and gazebo on the parcel. On April 29, 2019, the permit application was approved to remove and replace an existing shed and gazebo with the same dimensions and in the same location. On September 20, 2023, the Applicants were issued a NOV by the Town because the shed and gazebo do not meet setback requirements.

The Applicants contend that the CEO was in error in issuing the NOV because the structures existed prior to the Town adopting the Ordinance June 4, 1993, and are grandfathered. The structures are not grandfathered as evidenced by the previous Board's determination that they required permits in 1996.

The Applicant's also contend the CEO was in error in issuing the NOV because the previous CEO issued a permit to replace the shed and gazebo. The permit application submitted by the Applicants does not provide all the information regarding the project they conducted. It does not contain a diagram showing that the shed was to be relocated from adjacent to the road to approximately ten feet from the pond. The application also does not indicate the shed will have utilities or be used as a playhouse. The mortgage survey obtained by the applicants dated December 28, 2018, and submitted with the application, shows the location of movable sheds at the time of purchase. The assertion in the application that the shed and gazebo were to be replaced in their existing location would indicate they would be in the locations shown on the mortgage survey submitted with the application since there was not any other diagram. The previous CEO could not approve a location for the shed that was more non-conforming than it already was based on the Town's Ordinance. The current location of the shed is in violation of the permit issued by the previous CEO since it is located closer to the pond than shown in the mortgage survey.

The permit application submitted by the Applicants as it relates to the gazebo is not the correct application for the project. Rather than an application for a replacement gazebo, the application for the gazebo should have been for a new accessory structure since the gazebo was not legally existing. Under the Town's Ordinance a permit application for a new accessory structure within the setback cannot be approved by the CEO. Approval of a new accessory structure in the setback requires a variance from the Board. The Applicants have not received a setback variance for the gazebo from the Board. A previous Board denied a similar variance setback reduction request on this parcel.

Based on these considerations, the Department recommends that the Board deny the administrative appeal on the basis that the applicants have not demonstrated the Code Enforcement Officer made an error in issuing the Notice of Violation.

Thank you in advance for thoughtfully considering the Department's comments. Please contact me if you have any questions or seek further clarification in this matter. I may be reached by telephone at (207) 615-7044 or return email at Jeffrey.C.Kalinich@maine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Kalinich". The signature is stylized and cursive.

Jeffrey Kalinich
Assistant Shoreland Zoning Coordinator
Bureau of Land Resources

cc: Brenda Charland; Town of Lyman Code Enforcement Officer
Bradley Morin; Town of Lyman Attorney
File