

POLAND BOARD OF APPEALS
MINUTES OF MEETING
September 2, 2020
Approved on 7-21, 2021

CALL TO ORDER – Chairperson Gerard Bowes called the meeting to order at 6:30pm with Vice Chairperson Mark Hyland, Joseph Radziszewski, Jr, Lou Ann Lancaster, and Code Enforcement Officer Scott Neal present.

Public Attendance: See attached sign in sheet.

BOARD ORGANIZATION

Chairperson Bowes nominated Mark Hyland to be Chairperson. Member Lancaster seconded the nomination. Discussion: None Vote: 3-yes 0-no 1 abstained (Mark Hyland abstained from voting.)

Member Lancaster nominated Gerard Bowes to be Vice Chairperson. Chairperson Hyland seconded the nomination. Discussion: None Vote: 3-yes 0-no 1-abstained (Gerard Bowes abstained from voting.)

Vice Chairperson Bowes nominated Joseph Radziszewski, Jr to be Secretary. Member Lancaster seconded the nomination. Discussion: None Vote: 3-yes 0-no 1-abstained (Joseph Radziszewski, Jr abstained from voting.)

MINUTES – Chairperson Hyland moved to approve the minutes. Member Lancaster seconded the motion. Discussion: None Vote: 4-yes 0-no

COMMUNICATIONS – None

APPEALS - Administrative Appeal – Troy Bryant – Map 35 Lot 27

- **Chairperson Hyland went through the procedure to be followed by the Board of Appeals (Board) and participants.**
- **Conflict of interest among Board Members:** Chairperson Hyland asked if any members of the Board have a conflict of interest. Member Lancaster stated she has a conflict of interest with the first appeal on the agenda, Troy Bryant, as she is an abutter. Member Lancaster will not be voting on this appeal.
- **Troy Bryant is present and being represented by his attorney Keith Richard.** Mr. Richard's asked the Chairperson Hyland if in lite of Member Lancaster's recusal if it is still a requirement that all three members of the Appeals Board (Board) have to vote in the affirmative instead of two out of three voting in the affirmative. Chairperson Hyland said all three people have to concur in accordance

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with the ordinance. Mr. Richard's asked for the section of the ordinance. For appeals it is section 304.2 under powers and duties, part B and under that it says "When errors of administrative procedures or interpretation are found, the case shall be remanded to the Code Enforcement Officer or Planning Board for correction. By a concurring vote of at least three (3) members of the Board, an action of the Code Enforcement Officer may be modified or reversed."

- **Right, Title, or Interest by the Applicant:** Chairperson Hyland asked Mr. Richard's to establish right, title or interest.
 - Mr. Richard's - Mr. Bryant is one of several back lot owners that has a right of way over Lot 27 that was established in the 1950's and he has a reference in his deed to it.
 - Chairperson Hyland - how many backlot owners have the right of way in their deeds as part of their ownership?
 - Mr. Richard's - I think there are five properties with the right of way.
 - Chairperson Hyland – So there could be as many as five different people asking to put a dock on this right of way.
 - Mr. Richard's – That question is not before this Board tonight and I think that ultimately that question is between those owners as to how they resolve that conflict. It is not within the purview of the Board of Appeals to adjudicate what is really a civil private dispute.
 - Chairperson Hyland called for a motion on title, right, or interest.
 - Member Bowes moved to approve that the applicant has right, title, or interest in the property by way of the right of way in his deed. Member Radziszewski, Jr seconded the motion. Discussion: None Vote: 3-yes 0-no 1-abstained (Member Lancaster abstained as she has a conflict of interest.)
- **Standing:** Member Bowes moved to approve that Mr. Bryant has standing to appeal. Chairperson Hyland seconded the motion. Discussion: None Vote: 3-yes 0-no 1-abstained (Member Lancaster abstained as she has a conflict of interest.)
- Chairperson Hyland – Mr. Bryant you may state your case.
- Mr. Richard's – Thank you Mr. Chair. We are appealing from a May 24th denial of a dock permit. The Code Enforcement Officer's denial of a shoreland zoning permit

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for my client to construct a dock. We appealed that decision on June 5th and that this appeal is timely. I submitted a follow up letter to the Board on July 17th outlining additional information that I thought was relevant to the appeal. Based upon my understanding of the facilities here and the Town's Covid restrictions would limit my ability to use visuals and to present what I planned for my presentation. I will be referring tonight to some of the attachments that are in that July 17th letter. I have spoken to Sarah Merrill who assured me that each member should have a copy of this. It will be easier to refer you to the matters that are attached to this letter here as opposed to having to flip through the entire packet. I think there are several items I'll refer to that will have to go to this, but wherever possible I want to make this easier for everyone to follow along. Mr. Bryant purchased his property at 151 Watson Road in February of this year. When he purchased, he relied on the fact that the property came with this right of way to Upper Range Pond and the deed provided that he would have shore privileges. From speaking with several other owners in the neighborhood about his rights and what was in existence at the end of that right of way until 2019, he understood that the right of way included the right to install a dock so that holders of the right of way could access Upper Range Pond. That dock use was in existence, the evidence will show, until it was ordered removed in 2019 by to Code Enforcement Officer. The right of way parcel that we're talking about is identified as tax parcel 35-27 and I'm going to refer to that parcel as Lot 27. We submitted as part of the appeal a copy of the Watson plan, which dates to 1957, and in reviewing the Watson plan from 1957 you'll see that Lot 27 is laid out in the same way, more or less, as on the next page shows tax map 27. As we've already established earlier tonight there are other backlot owners that hold the same right of way over the same lot and their deeds include what are called shore privileges. I want to be very clear with the Board that not every right of way includes that right to install a dock at the end of it. And as we lawyer's despicably say so often, it depends. The law looks to the language of the deed and the circumstances surrounding a conveyance and how that right of way is used over time. It looks at whether the servient owner, the owner that owns the waterfront property subject to the right of way, whether they allow certain uses, and it considers that in deciding what is intended by that conveyance. As I stated my clients' rights can be traced to 1957 and his deed that includes shore privileges and the facts will establish that a right of way and a dock use was in existence on this right of way until 2019. The very first time that anyone questioned whether a dock use was allowed at the end of Lot 27 was last year. A dock use had been in existence at the end of that right of way for decades until last year. That is a very important fact and circumstances in this case. We are asking this Board to grant the appeal and order the Code Enforcement Officer to issue the permit on the basis that a dock use on this lot in conjunction with this right of way is grandfathered and the Code Enforcement Officer erred in applying an ordinance that came into effect after this right of way and the rights associated with it came into existence. A couple factual issues including who actually owns Lot 27 and what existing dock uses are on Upper Range Pond in the neighborhood. The legal issues I'm going to focus

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my presentation on are first: whether the dock use is grandfathered and second: whether the Code Enforcement Officer erred in applying §504.5. C. to combine this lot and an adjoining lot in assessing whether frontage requirements were met. I intend to discuss the legal issues in depth first and then I have three witnesses I would like to present as part of our case. First I will call Adam Farrington who will speak about his families use of the right of way and a dock that dates to the 1990's. I will then call my client Troy Bryant who will speak to his understanding of what he was purchasing when he purchased his property and what he wants for a dock. And third I have some questions for your Code Enforcement Officer regarding factual issues related to his denial letter.

- Mr. Richard's presented the history of the property from the 1950's and went over the photos in the packet he gave to the Board. Mr. Richard's also went over the photos from Google Earth and the photos submitted by Holly Kerr and Lynn Ford. All photos are in the packet. Mr. Richard's states that the problem with the photos is that they only show a snapshot in time and don't contradict the use that was in existence until 2019. Also, the area where the dock has been located is not shown in the photos because of the trees over the shoreline. Some of Ms. Kerr's photos show pictures of a dock which is contrary to her assertions that the dock use is new. The photos don't show what was in the water on other dates. Adam Farrington will give testimony that he has put a dock in on Lot 27 since the 1990's and never had a problem. The dock is grandfathered, the ordinances don't apply to it, and Mr. Bryant has a legal right to continue to maintain the dock use.
- Mr. Richard talked about Grant V. Town of Belgarde which deal with grandfathering use of landowners and applied it to Mr. Bryant's case. Mr. Richard's then talked about a previous Appeals board case regarding Mr. Rosenthal's appeal of a dock which had not been in continuous use. He quoted Chair Hyland from those minutes – "the dock is a nonconforming use based on our ordinance. And Mr. Neal pointed out that at some point a nonconforming use gets extinguished if it's not used. Usually that's a year. So that's where you are. We're left with a couple of different problems." (Page 26 of the Appeals Board Minutes from 10.16.2020.) Ultimately the Board in that case concluded that since the dock hadn't been used in over three decades that the dock was not grandfathered. That was the correct decision and interpretation of how grandfathering works. Unlike Mr. Rosenthal, the dock use in this case was not discontinued and was in use until 2019, there is no beach area, and the application meets the requirements in all other respects except frontage based upon the May 21st denial letter. But because the dock is grandfathered, we ask the Board to grant the appeal.
- Mr. Richard's talked about §504.5 C. – The Code Enforcement Officer's denial letter stated that Lot 27 is in the same ownership as adjoining parcel tax map 34 lot 1. Therefore, these two parcels would be combined under the ordinance and because they don't meet the shore frontage requirement a second dock cannot be

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put on the right of way and denied the permit. Mr. Richard's states you must look at the plain language of the code and put it in context. In Poland under 508.27. D. it's one lot, one dock. Mr. Richard's argues that Lot 27 is a single lot therefore it meets this requirement, and the combined lot requirement should be disregarded. He then argues that the purpose of the ordinance is to prevent one owner from having more than one dock to access the water and doesn't apply to owners of rights of way that can't use the other dock. If the land the right of way is on were owned by another owner, then §504.5 C. wouldn't apply. The lots wouldn't be combined, and there's presently no dock so this meets the one lot one dock rule. Mr. Richard's then explained the law school analogy of a bundle of sticks for property rights.

- Mr. Richard's then questioned Adam Farrington of 141 Watson Road, Poland. Mr. Farrington stated that he had always had a dock on the right of way and was surprised when Mr. Bryant's permit application was denied. He stated the photos in the packet from the Applicant are from the 1990's. The bank is very steep and rocky and it's hard to walk down without a dock. They left the ramp down so they could get down in the wintertime. They never obtained a permit for that dock because Art Dunlap, former Code Enforcement Officer (CEO), said they didn't need one. Mr. Farrington was told via letter in August 2019, by Scott Neal, CEO, that there was a complaint from a neighbor that the dock was too wide, so he had to take the dock away. Mr. Farrington chose not to appeal the removal of the dock in 2019. Everyone with a right of way wants the dock there. Mr. Farrington then went through the Google photos and the photos from Ms. Kerr and Ms. Ford. Mr. Farrington stated that the Google photos wouldn't show the dock because of how far the tree limbs go out over the water and they're from May and September when docks aren't put in yet or have been taken out. Mr. Farrington stated that some of the photos submitted by Ms. Kerr showed the dock on the bank and in the water. Mr. Farrington stated that the unwritten rule of all of the people with this right of way in their deed is that they all share the dock and no one is going to apply for their own dock permit or not allow someone else to use the dock. Everyone has gotten along great since 2019 when someone complained to the CEO.
- Mr. Richard's then questioned his client Troy Bryant of 151 Watson Road. Mr. Bryant purchased the property in February of 2020. He bought the property because it had the right of way to the water and a good opportunity to get water access and have a dock. Mr. Bryant took a photo of his daughter's 10 foot paddle board sticking out from the shore to show that you wouldn't be able to see a 10 foot dock on the shoreland because the trees stick out so much over the water. Therefore, the aerial photos from Google wouldn't show if a dock was really there or not. Mr. Bryant would like a four foot by fifteen foot (4' x 15') dock. Mr. Bryant claims that out of the five people who have use of this right of way he and Mr. Farrington are the only ones who don't have access to another right of way and

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have a dock. If he's allowed to have a dock, he would allow the others to use the dock.

- Mr. Richard's then questioned Code Enforcement Officer (CEO) Scott Neal. Mr. Neal has been the CEO for two and a half years and has been permitting docks the entire time. Mr. Richard's asked how many dock permits CEO Neal issues each year and sought a specific answer. Chairperson Hyland asked him to move this along. Mr. Richard's asked if there are more docks in the water than there are permits for and CEO Neal agreed there are. Docks are based on history. When a dock is complained about by someone CEO Neal will check on it. Mr. Richard's wanted to know how many docks are on properties that have two hundred feet (200') of frontage. CEO Neal doesn't know. Mr. Richard's asked if CEO Neal has ever granted a permit for a dock at the end of a right of way. CEO Neal said he has not. Mr. Richard's asked if CEO Neal agrees that you don't have to be the water front property owner to get a permit for a dock. CEO Neal said he doesn't agree with that. Mr. Richard's asked CEO Neal about his interpretation of shore privileges and if he has seen the new statute, Title 33 Section 459, and his understanding of it. CEO Neal said that shore privileges doesn't specifically say a dock and just because you have a right of way prior to this statue that doesn't automatically guarantee a right to a dock. Mr. Richard's then asked about the denial letter from May 21, 2020, specifically if the lot size is based on solely on Lot 27 and if there were any other reasons the permit was denied. CEO Neal said the lot size was a combination of the lots and all the reasons for the denial of the permit are in the denial letter. Mr. Richard's asked if he has investigated the chain of title on the lots. CEO Neal said that was investigated by the Town Attorney. Mr. Richard's stated that according to the Town's GSI Mapping system it says that the Town of Poland owns Lot 27 and if that's true then there's no basis to combine the lots. CEO Neal stated that the research shows that the Town does not own it. Mr. Richard's asked if in CEO Neal's time as CEO if he has ever denied a permit by combining lots and applying the ordinance like this. CEO Neal said no because this issue has never happened before. Mr. Richard's asked if he agrees that Lot 27 is its own separate lot. CEO Neal said it was but is now combined with the adjoining lot because it's owned by the adjoining land owner and must be combined under the CLUC rules.
 - Chairperson Hyland interrupted at this point. He stated that this is a common practice in the Town of Poland and various municipalities around the state. We aren't the only town to do this and it doesn't matter whether it's on the lake or not it has to do with whether they're nonconforming lots. Mr. Richard's thanked Chairperson Hyland and said he would move along.
- Mr. Richard's asked CEO Neal about the part of Section 504.5. C. which talks about conforming lots becoming nonconforming after this section is enacted and this section not applying to those lots. Mr. Richard's asked if this rule applied to Lot

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27. CEO Neal stated that was something Mr. Richard's would have to prove. Mr. Richard's asked if CEO Neal has investigated whether this use is grandfathered and what he discovered. CEO Neal said he did and he had spoken to Mr. Farrington in 2019. Mr. Farrington said he had put the dock in and had a dock there before. They also discussed that in May of June of 2018 CEO Neal was on Lot 27 and there was no dock there. CEO Neal was on Lot 27 several times that year and he didn't see a dock and Mr. Farrington said he hadn't put a dock in that year. Mr. Richard's asked about the photos submitted via Google Earth and by Ms. Kerr.

- Chairperson Hyland asked Mr. Richard's to move along.
- Mr. Richard's asked if CEO Neal agreed that if the Board finds the use is grandfathered that the permit will be issued. CEO Neal stated that would be up to the Board. Mr. Richard asked if the Board does not combine agree the lots should be combined that the permit should be issued. CEO Neal said yes.
- Mr. Richard's requested to reserve time for rebuttal.
- Chairperson Hyland asked the Board if they had any questions thus far. The Board had none. Chairperson Hyland asked if there was anyone present who would like to speak on behalf of Mr. Bryant.
- Steve Lancaster of 164 Watson Road has concerns about whether the owners of lots 33, 34, and 35 actually own the right of way. They have a quitclaim deed which only states they have a right of way and this is the exact same wording as all other people who have a right of way i.e. it's boiler plate language. Therefore, he doesn't see how the properties can be combined under one owner because he doesn't think they own it.
 - Chairperson Hyland asked Mr. Lancaster if the two shorefront properties aren't owned by the same person. Mr. Lancaster said there are three lots owned by the Ms. Lipman and the right of way was added to the deed and wasn't in their previously. Chairperson Hyland asked who he believes own the right of way and Mr. Lancaster said the Town still owns it. Mr. Lancaster believes they were illegally granted a right of way.
- James Devonshire of 165 Watson Road stated that there have been docks there in the past and they have no problem with the dock being there now.
 - Chairperson Hyland asked if there has been a dock there every year or if it's been irregular. Mr. Devonshire stated he recalls them when he was up

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there, but he's been away for fifteen years and isn't sure what's been there during that time.

- Tara Farrington of 141 Watson Road stated that she'd been there since 2009 and there's been a dock there every year. She has helped to put it in on numerous occasions.
- Chairperson Hyland asked if there was anyone in opposition who would like to speak.
- Andrew Hill representing Holly Kerr and Lynn Ford stated that CEO Neal was correct in denying the dock.
- Holly Kerr's family has owned Lot 2 since 1957-58. There has been issues in the past as to where the right of way is located and she gave the history of this. The twenty-foot (20') right of way wasn't included as it should have been so this was remedied and added to the owner at the (the Stepp's) lot. Ms. Kerr says the Stepp's asked her parents to buy twenty feet (20') of their lot and her parents said no. Ms. Kerr doesn't remember a dock being there in the 90's and there was no dock the summers she took the pictures. She went through the pictures she took and said they each show that there's no dock. Ms. Kerr remembers that CEO Neal came over to the Stepp's multiple times in 2018 and she doesn't remember a dock there either.
 - Chairperson Hyland asked where the dock on the right of way would be located in the September 2, 2005, picture. Ms. Kerr said there was no dock there at the time, but it would be beyond the dock.
 - Mr. Bryant stated that in picture 6 if you look under the dock then you can clearly see another platform. Chairperson Hyland stated that he saw it. Ms. Kerr said that might have been the ramp, but it wasn't the dock.
 - Mr. Bryant also stated that in the first picture that to the left of the weeds in the upper corner that's the platform Mr. Farrington was referring to.
 - Ms. Kerr stated that there was a ramp on the embankment that was used to access the water, but that wasn't the dock. Also, that the right of way was never a separate piece of land.
 - Member Radziszewski, Jr asked about picture number 2. He asked if Ms. Kerr would agree that the ramp has always been there. Ms. Kerr said she does remember the ramp being there, but no dock on the end of it. Chairperson Hyland stated it sounds like it would be in the water sometimes.

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Ms. Kerr said if the water level rose then the end would get wet, but the majority of the time it's not in the water.

- Chairperson Hyland asked if there were any other opponents who wanted to speak. No one came forward. Chairperson Hyland gave Mr. Richard's the chance for rebuttal.
- Mr. Richard's offered to answer any specific questions the Board had and stated that the issue is whether the platform that has existed prior to 2001 a grandfathered use with Lot 27. The platform is a water dependent use and it doesn't matter if there's been a dock attached to it or not. Mr. Richard's also stated that who owns the right of way is still disputable and needs further research.
- Chairperson Hyland asked if anyone from the opposition would like a chance for rebuttal. Amy Lappin who is the owner of Lot 27 asked if the dock is grandfathered and allowed then does that mean she's not allowed to have a dock on her land.
 - Chairperson Hyland asked if she owns Lot 26A? Mr. Richard's stated it is tax map lot 34-1. Ms. Lappin stated she owns the old Stepp property and the property under the right of way (Lot 27 and Lot 1.).
 - Member Bowes asked if she's paying taxes on both lots. Ms. Lappin stated she is and she currently has a dock on her property.
 - Chairperson Hyland asked if she's been paying taxes on that all along. Ms. Lappin stated that they just bought it six months ago.
 - Member Bowes stated that she does legally own it, but do acknowledge that there is a right of way over the property. Ms. Lappin said she does know about the right of way.
 - Ms. Lappin stated that they bought the property in January and they got a permit for their dock.
 - Chairperson Hyland asked who owned Lot 27 before. Ms. Lappin stated that they were told there was a mistake with the mapping and it somehow got separated. However according to her title lawyer and the Town's lawyer she owns both lots as one combined property.
 - Ms. Lappin stated that she has historical pictures of her property that show Lot 1 historically has had a dock, but doesn't know about on the right of way i.e. Lot 27.

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- Mr. Bryant stated that when he bought his property it was his understanding according to the maps that the Town owned the right of way.
- Mr. Richard's asked if Ms. Lappin if the appeal is granted does she oppose the appeal provided that she is allowed to continue to have her dock. Ms. Lappin stated she is okay with Mr. Bryant having a dock, but is concerned about whether that would mean that everyone who has the right of way on their deed would be allowed to have a dock.
- Chairperson Hyland asked if there were any questions for the Board from anyone. No one had any.
- Chairperson Hyland asked CEO Neal about Lot 27. CEO Neal stated Lot 27 showed up in 2014 as being owned by the Town and no one knows why. There is no proof that the Town ever owned it. Chairperson Hyland asked about who was paying taxes on the property. CEO Neal said he couldn't tell.
- Chairperson Hyland closed the hearing to the public and moved on to the Board's discussions.
- Member Bowes stated that he agrees with CEO Neal that no more than one dock is allowed on a piece of property without the allowed frontage. He doesn't see anything saying they can have docks on the right of way and he's doesn't think everyone with a right of way should be able to have a dock.
- Member Radziszewski, Jr agrees with member Bowes at this point that there's already a legal dock and there's not enough frontage for another dock. The ordinances have to be followed.
- Chairperson Hyland stated that the ordinance is stricter than the State standard in order to have more than one dock and we must abide by the ordinance.
- Someone in a muffled voice said the Board was forgetting the grandfathering.
 - Chairperson Hyland stated that he isn't forgetting the grandfathering. The testimony suggests there has always been something there and he makes no distinction between a ramp, platform, or dock. It only takes a year for a grandfathered use to be extinguished.
- Mr. Bryant stated that everything he looked at showed that Lot 27 was owned by the Town of Poland. There are a lot of properties that only have twenty or thirty

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feet (20' – 30') of property that have a dock. He bought this property and relied that he would have water access.

- Mr. Richard's asked for procedural clarification that Mr. Bryant has right, title, or interest.
 - Chairperson Hyland stated that procedurally the right of way has use of the shore frontage has the right to a dock. He doesn't disagree with that premise. There are some right of ways that don't say that and that's a problem. The biggest problem is the ordinance.
- Mr. Richard's stated that if you have to have two hundred feet (200') of frontage then that's going to open up a lot of issues. Mr. Richard's stated that Section 504.5.C.'s last sentence would prevent the issue.
 - CEO Neal states that the lots would be legally nonconforming.
- Ms. Merrill called the Board's attention to the time.
- Ms. Farrington stated that there has been something there for 30 years, but because there wasn't something there in 2018 that all goes away? It isn't right.
- Chairperson Hyland stated that his issue is the grandfathered aspect of the case. If the dock has been there all along then there hasn't been a change in the nonconforming use. The Rosenthal case hinged on the fact that there hasn't been a dock there for a long time and the use was extinguished. In this case we've heard overwhelming testimony that there was a dock there and this is a different situation.
- Member Radziszewski, Jr agreed that the ramp/dock has been there year after year.
- Mr. DeBartolo asked about liability issues and if Mr. Bryant is allowed to have a dock, then will others in the future be allowed to have a dock?
 - Chairperson Hyland stated that he doesn't have an answer regarding the liability question. That's a question for your lawyer. As to the second part – if they agree that this dock can go there then there's never going to be another dock there because he expects the CEO will deny any other person from getting a dock on the lot and the Appeals board will uphold that. There's only proof of there being one dock there so it can't become more.

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- Member Radziszewski, Jr moved to approve the appeal that the CEO was in error through no fault of his. Member Bowes seconded the motion. Discussion: None
Vote: 3-yes 0-no
- Ms. Lappin asked if she can't have a dock on her property. Chairperson Hyland said she can have her dock on her property, and she already has approval for that.

A. FINDINGS OF FACT:

1. Name of Applicant: Troy Bryant
2. Mailing Address: 151 Watson Road
3. City or Town: Poland State: ME Zip: 04274
4. Telephone: 577-6112
5. Name of Property Owner (if different from applicant): John DeBartolo and Amy Lappin
6. Location of property (street/road address): Watson Road
7. Zoning district in which property is located: Rural Residential 2 and Limited Residential.
8. Tax map and lot number of subject property: Map 35 Lot 27
9. The applicant has demonstrated a legal interest in the subject property by providing a copy of a: Deed showing interest in a right of way on the property.
10. The applicant proposes to install a 4' x 20' (four foot by twenty foot) dock on the right of way.
11. The completed application was submitted on May 5, 2020.
12. A public hearing was held on September 2, 2020.
13. The relevant sections of the Poland Comprehensive Land Use Code are:
§508.27, §304.2.B., and §504.5.C.
14. The other relevant factors are as follows:
 - a. The lot contains 20' (twenty feet) of shore frontage which is less than the minimum of 200' (two hundred feet) of shore frontage. In the ordinance, §508.27. D.1., it is clear that only one dock per lot for shore frontage of that size is allowed.

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- b. There was testimony from a number of parties including Mr. and Mrs. Farrington that the right of way had a dock on it since the mid to late 90's, but before the adoption of the ordinance.
- c. We heard testimony from a number of people that there was a dock there continuously.
- d. There was also testimony that there were times when the dock wasn't there, but overall, there was photographic evidence that the dock was in the water or pulled up on shore.

B. CONCLUSIONS OF LAW:

Based on the above stated facts and the provisions of the ordinance cited, the Board concludes that the deed of the right of way does not prohibit the use of the dock. However, the shore frontage for the lot, and the ordinance does not allow for more than one dock per lot for shore frontage of that nature. The second dock was a nonconforming use and that nonconforming use was not extinguished. It was grandfathered and it's been in continuous use at least for the last twenty years.

C. DECISION:

Based on the above findings of fact and conclusion, the Town of Poland Board of Appeals votes to **approve** your application for administrative appeal. If you are unhappy with this decision, you may request a reconsideration by the Board within thirty (30) days of the date of this decision. You may file an appeal in the Superior Court within forty-five (45) days of the date of this decision.

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Administrative Appeal – Jonathan Turgeon – Map 32 Lot 15

- **Chairperson Hyland went through the procedure to be followed by the Board of Appeals (Board) and participants.**
- **Conflict of interest among Board Members:** Chairperson Hyland stated that all four members of the Board will be hearing and voting on this appeal therefore, it requires three members to overturn the denial.
- **Jonathan Turgeon is present and represented by Tom Dubois a professional engineer with Maineland Development Consultants.**
- Mr. Dubois stated that the on page 100 of the Comprehensive Land Use Code which is Table 508.27. A. number 16 states that onsite and offsite structures accessory to allowed uses is what they're basing their appeal on. The property has a dilapidated and run-down camp and Mr. Turgeon is asking to tear it down with the exception of the first floor and basement which he would like to use as a deck and storage under the deck. CEO Neal rightly sighted the section of the ordinance that they only have a year to rebuild once the building is condemned. However, they are not looking to rebuild but to allow an accessory structure. A number of neighbors have submitted letters in support of this project. They are concerned over the due process the Mr. Turgeon has received as this is the third attempt at meeting.
- Chairperson Hyland asked if the Board has any questions.
- Member Bowes asked how long Mr. Turgeon has owned the property.
 - Mr. Turgeon stated he has owned it for approximately four years.
- Member Bowes asked if the building was already there when he purchased the property.
- - Mr. Turgeon stated that it was.
 - Mr. Dubois stated that the timeline had already run out at that point.
- Member Bowes asked if the previous owner had asked the Town to take the property off the tax roll.
 - Mr. Dubois stated that was correct.

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- Mr. Dubois stated that they aren't looking for a residential structure, but for a utilization of the existing structure for a deck and storage under the deck.
- Member Radziszewski, Jr asked if they're going to tear everything out because it's a safety hazard.
 - Mr. Dubois stated that they're going to tear down the roof and four walls, keep the floor, and utilize the basement for storage.
 - Member Radziszewski, Jr asked how they can do that when there's been zero taxes for twenty years or something like that.
 - Mr. Dubois stated he though it was since 2009.
 - Member Radziszewski, Jr asked if someone has said the flooring is alright or is it rotten?
 - Mr. Dubois stated they may need to reconstruct it.
- Chairperson Hyland asked what is the setback currently from the deck to the shoreline.
 - Mr. Dubois stated he doesn't know.
 - CEO Neal stated it's approximately five feet (5') to the shoreline.
- Chairperson Hyland asked how deep the lot is.
 - Mr. Dubois stated it's deep enough for a dock and the Applicant already has a dock and this would be an accessory use to the dock. Mr. Dubois thought Chairperson Hyland was asking about the depth of the water. Mr. Dubois then stated that the lot is fifty or sixty feet (50'-60') total depth.
- Member Bowes asked if the setback for a new structure is one hundred feet (100').
 - CEO Neal stated it is.
- Member Radziszewski, Jr asked what the setback is for an accessory.
 - CEO Neal stated that section 508.27. A. is only a chart of who can and can't approve these uses and they still have to meet all current setbacks. CEO Neal can review that, but if the structure can't meet the current setbacks,

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then he can't approve it. Everyone agrees that the time to do this was nine years ago.

- Mr. Dubois asked whether it was relevant if the existing structure has value. They aren't asking to replace the existing structure with a residence. They're asking for an accessory use to the dock permit that's already been given.
 - CEO Neal stated that the year the previous owner had to get a permit has expired; therefore, there's nothing there.
 - Mr. Dubois stated that if they were asking for a residential structure he would agree, but because they want an accessory use it's different.
- Member Lancaster asked if at the time the building lost value was the prior owner asked to tear it down at that time.
 - Mr. Dubois stated that he can't find that happened.
 - CEO Neal stated that there's nothing in the record asking them to do that.
- Mr. Dubois brought up the picture showing the roof falling in that you can see daylight through.
- Chairperson Hyland stated that they would all agree that it's more than fifty percent (50%) destroyed.
 - Mr. Dubois stated that they've never argued that there's any value there.
- Member Bowes suggested that they be allowed to tear everything down and just use the property without a structure on it because otherwise it's violating the ordinance.
 - Mr. Turgeon stated that he wants to be able to use the area underneath to store stuff and when he purchased the property, he was told by the previous CEO that he would be able to put a deck. And the foundation is good and holds the banking back to keep the road from going into the lake.
 - Member Bowes asked if CEO Neal has any record of that from the previous CEO.
 - CEO Neal stated he has no record of that.

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- Mr. Turgeon stated that all of the neighbors and the DEP have no issues with what he wants to do, but it's up to the Town. Nothing he wants to do will hurt the lake.
 - CEO Neal stated that the DEP does not get involved with the zoning ordinances of the Town even if DEP approves it.
- Chairperson Hyland asked if any other proponents wish to speak or any other questions from the Board.
- Member Radziszewski, Jr asked what the setbacks for accessories on the lake is.
 - CEO Neal stated it's one hundred feet (100').
 - Member Radziszewski, Jr stated that doesn't give him much of an option. He thought maybe something smaller would fit, but it won't work.
- Jamie Rothfus of 146 Jordan Shore and she is speaking on behalf of her parents that live nearby. The house has been there for a long time and is dilapidated They are ok with a small deck to preserve the banking and plant more trees.
- Chairperson Hyland asked if any opponents to the appeal would like to speak. No one came forward.
- Chairperson Hyland opened the floor back to Mr. Turgeon.
- Mr. Turgeon stated that by not allowing him to have the deck and storage that it hurts the value of the property. There are other lots with less frontage that have decks and he should be able to as well. The building was never formally condemned.
- Member Radziszewski, Jr asked what the size of the old camp is.
 - Mr. Dubois stated it's approximately eighteen feet by twenty-four feet (18' x 24').
 - Mr. Turgeon stated it is twenty-six by seventeen feet eight inches (26' x 17' 8").

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- Chairperson Hyland closed the hearing to the public and moved on to the Board's discussions
- Chairperson Hyland stated that the structure is nonconforming and it's been destroyed beyond fifty percent (50%) of its value which everyone agrees on. Unfortunately, the ordinance is very clear that you have one year to rebuild, but ten or eleven years ago was the time to do it. The design is nice, but that's not what the ordinance allows so he will be voting to uphold CEO Neal's decision.
- Member Radziszewski, Jr agrees with Chairperson Hyland.
- Member Bowes agrees with Chairperson Hyland and Member Radziszewski, Jr. Also, the letter from Colin Clark got an opinion from the state AG's office that this is too far gone.
- Member Lancaster agrees with the rest of the Board. There's nothing there to save.
- A member of the audience asked if the foundation comes down and the road starts to erode into the lake then what's the impact to the lake.
 - Chairperson Hyland stated the the Town or DEP will require Mr. Turgeon to fix the erosion.
- Mrs. Turgeon stated that their having to fix the erosion isn't really fair to them when what they want to do won't cause erosion to begin with.
- Chairperson Hyland asked for a motion. Member Radziszewski, Jr stated that they hadn't done right, title, and interest.
- **Right, Title, or Interest by the Applicant:** Member Radziszewski, Jr moved that Mr. Turgeon has right, title, or interest in the property by way of the deed presented. Member Bowes seconded the motion. Discussion: None Vote: 4-yes 0-no
- **Standing:** Chairperson Hyland moved that the Appeals board is the right place for this appeal because it's a nonconforming use and a variance to the existing standards. Member Radziszewski, Jr seconded the motion. Discussion: None Vote: 4-yes 0-no
- Member Radziszewski, Jr moved to approve the appeal of Mr. Turgeon. Chairperson Hyland seconded the motion. Discussion: None Vote: 0-yes 4-no

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A. FINDINGS OF FACT:

1. Name of Applicant: Jonathan Turgeon
2. Mailing Address: 20 Garland Swamp Road
3. City or Town: Poland State: ME Zip: 04274
4. Telephone: 576-8736
5. Name of Property Owner (if different from applicant): Jonathan and Elizabeth Turgeon
6. Location of property for which variance is requested (street/road address): 19 Garland Swamp Road
7. Zoning district in which property is located: Rural Residential 1, Aquifer Protection Overlay 1, and Limited Residential.
8. Tax map and lot number of subject property: Map 32 Lot 15
9. The applicant has demonstrated a legal interest in the subject property by providing a copy of a: deed.
10. The applicant proposes to tear down an existing structure and replace it with an 18' by 26' (eighteen foot by twenty-six foot) deck which would also house underneath storage for various shorefront paraphernalia.
11. The completed application was submitted on May 8, 2020.
12. A public hearing was held on September 2, 2020.
13. The relevant sections of the Poland Comprehensive Land Use Code are: §504.5, §508.27, §304, and §504.3.
14. The other relevant factors are as follows:
 - a. The current structure is within 5' (five feet) of the shoreline.
 - b. All of the parties agreed that the structure is more than 50% (fifty percent) destroyed and had been more than 50% (fifty percent) destroyed for more than 10 (ten) years.
 - c. There was testimony that there were concerns that the structure was going to fall down as it has become a hazard. As well as concerns that the foundation will fall down and cause erosion of the roadway.

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B. CONCLUSIONS OF LAW:

Based on the above stated facts and the provisions of the ordinance cited, the Board concludes that the structure was more than 50% (fifty percent) destroyed in 2009. That the structure was not repaired within a year; therefore, the property has to be viewed as a first time project or a first time structure requiring a setback of 100' (on hundred feet) in our ordinance under

§ 508.27. The lot is too small to allow for a 100' (on hundred foot) setback so the structure can't be built.

C. DECISION:

Based on the above findings of fact and conclusion, the Town of Poland Board of Appeals votes to **deny** your application for administrative appeal. If you are unhappy with this decision, you may request a reconsideration by the Board within thirty (30) days of the date of this decision. You may file an appeal in the Superior Court within forty-five (45) days of the date of this decision.

ANY OTHER BUSINESS – None

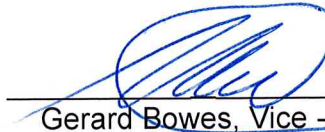
ADJOURN – Member Bowes moved to adjourn the meeting at 9:25 pm. Member Lancaster seconded the motion. Discussion: None Vote: 4-yes 0-no

Recorded by: Sarah Merrill

Board of Appeals



Mark Hyland, Chairperson



Gerard Bowes, Vice - Chairperson



Lou Ann Lancaster, Member

Joseph Radziszewski, Jr., Member