

Town of Belgrade
Board of Appeals Meeting
December 16, 2020
Approved January 13, 2021

Members Present: Michial Heino – Chairman (2021), Jay Bradshaw (2022), David Bonar (2023); Norma Blazer, Secretary (2023), Dick Bourne (2022)

Alternate Present: Liz Fontaine – (2022)

Also Present: James N. Katsiaficas, Esq., Attorney for the Belgrade Board of Appeals; Chris Neagle, Esq., Attorney for Geoffrey and Carolyn Stiff; John Cunningham, Esq., Attorney for Jody C. and Stephen C. Jones; Mr. John Sutton, Appeals Applicant; Anthony Wilson, Belgrade Town Manager; Richard Sutton; David Bean, Laura Rose Day, Rudy Heintze, Geoff Stiff, Carolyn Stiff, Eric Forsbergh, Nancy Vailas, and Lynn Moore.

With four members of the Board of Appeals present at 6PM, a quorum is satisfied, and Chairman Michial Heino called the meeting to order. Dick Bourne connected to the meeting at 6:25 PM.

This meeting was conducted and recorded on Zoom and the entire meeting may be viewed at <https://youtu.be/pchL17YfQWI>. All votes were conducted by roll call.

On motion duly made and seconded (Dave Bonar/Jay Bradshaw), the minutes of the meeting on November 18, 2020, were approved as presented. (YES 4/NO 0/Dick Bourne arrived at 6:25 PM.)

The chairman opened the public hearing in the matter of two applications for appeal related to Belgrade shoreland zoning permit number 78-19 issued on Aug. 6, 2020, to Jody C. and Stephen C. Jones for a project at 326 Sandy Cove Road.

1. Application for appeal dated Sept. 3, 2020, filed by Geoffrey and Carolyn Stiff, represented by Chris Neagle, Esq.
2. Application for appeal dated September 7, 2020, filed by John T. Sutton.

Both appeals were conducted as administrative appellate hearings. The Board of Appeals' responsibility was to review the Planning Board's decision based solely on the Planning Board's record which included Findings of Fact and Conclusions of Law adopted by the Planning Board on October 16, 2020. The Board of Appeals examined the record to determine whether there was an error of law, whether the Planning Board's decision was supported by substantial evidence, and whether there was any abuse of discretion.

APPEAL OF GEOFFREY AND CAROLYN STIFF, REPRESENTED BY CHRIS NEAGLE, ESQ.

Geoffrey and Carolyn Stiff thanked the Board for its consideration of their appeal and stated their desire for the Board of Appeals to protect the character of their property on Sandy Cove Road by properly enforcing the Shoreland Zoning Ordinance.

Chris Neagle, Esq., attorney for the Stiffs, referred to his memo of November 13, 2020, with its attachments and to letters from neighbors in support of the Stiffs' appeal.

Mr. Neagle raised four issues of law and asked that the Board of Appeals uphold the Stiffs' appeal and send the case back to the Planning Board with a decision that the permit be denied based upon the following:

1. The Planning Board approved the Jones structure as an "accessory structure," but the Stiffs do not agree that it is an accessory structure.
2. Section 15(U) of the Belgrade Shoreland Zoning Ordinance requires a certified soils report from a state certified professional and the Joneses did not supply such a report as part of their application.

3. The Planning Board did not require the Joneses to submit information on compliance with the Belgrade Flood Management Plan.
4. The Planning Board allowed the Joneses to file an erosion and sedimentation control plan after the Planning Board approved the permit.

David Bean, a camp owner at Sandy Cove, stated he attended each Planning Board meeting where the Jones' permit application was discussed and he supports the Stiffs' appeal. Eric and Yvonne Forsbergh, also neighbors at Sandy Cove, stated they support the Stiffs' appeal and believe the Joneses should be required to follow the law, as they themselves have been required to do.

John Cunningham, Esq., attorney for the Joneses, made these arguments on behalf of Jody and Stephen Jones.

The Planning Board looked at the plan that was presented to them for a building already built and made its decision, which is the subject of this appeal.

1. The Shoreland Zoning Ordinance does not stipulate a size limit on an accessory structure. The Planning Board imposed a condition prohibiting kitchen appliances and the preparation of food in the accessory structure.
2. The septic system application signed by a State Certified Soil Evaluator met the Soils Report requirement of the Shoreland Zoning Ordinance.
3. By site observation in November 2019 and by examination of the town and FEMA maps, the Planning Board concluded the site meets the requirements of the Flood Management Plan.
4. The Planning Board conditioned its approval on the receipt and review of a Soil Erosion and Sedimentation Control Plan.

No citizens spoke against the applications for appeal.

Mr. Neagle and Mr. Cunningham each gave rebuttal statements.

Members of the Board of Appeals asked questions of the parties and their representatives.

Mr. Neagle acknowledged related documents in support of the appeal. These letters and emails are not part of the Planning Board record, but they have been received by the Board of Appeals:

Letter dated December 4, 2020, from Lynn Moore and Robert Moore on behalf of the Stiffs.

Letter dated December 4, 2020, from Lynn Moore, Road Commissioner for the Sandy Cove Association.

Emails dated December 15 from Donald and Kathleen Appleton, December 15 from Wayne Kuegel, December 14 from Paul Bean, and December 14 from Rudy Heintze.

On motion duly made and seconded (Bonar/Bradshaw), the public hearing in the matter of Application for Appeal filed by Geoffrey and Carolyn Stiff was closed. YES 5/NO 0.

Mr. Heino closed the public portion of the Stiff hearing.

APPEAL OF MR. JOHN SUTTON

Mr. Heino opened the public hearing on the appeal filed by Mr. John Sutton on September 7, 2020.

Mr. Katsiaficas stated the Stiff and Sutton appeals are from the same Planning Board decision explained by the Planning Board's Findings of Fact and Conclusions of Law signed on October 16, 2020. Like the Stiff hearing, the Sutton hearing is an appellate hearing. The Board of Appeals can reverse the Planning Board's decision only on finding that the Findings of Fact and Conclusions of Law are contrary to specific provisions of the Shoreland Zoning Ordinance or contrary to facts presented to the Planning Board.

Mr. Neagle acknowledged related documents that are not part of the Planning Board record but have been received by the Board of Appeals and/or the town in this matter:

Letter dated December 4, 2020, from Lynn Moore and Robert Moore on behalf of Mr. Sutton.

Letter dated December 4, 3030, from Lynn Moore, Road Commissioner for the Sandy Cove Association.

Mr. Sutton gave his argument for the appeal, outlining two concerns.

1. The Planning Board did not define the width of his right of way across the Jones property, even though a deeded right-of-way centerline is shown on the site plan.
2. The location of the new Jones septic discharge point will permanently foul a portion of his adjoining property and may also drain through his property into Long Pond, either event being to his detriment.

Mr. Cunningham responded to Mr. Sutton's argument.

1. Evidence in this decision is the site plan prepared by a licensed land surveyor and there is no width stated for the right-of-way. Establishing the width of a right-of-way is beyond the authority of the Board of Appeals.
2. The Planning Board based its decision on a Plumbing Permit issued by a Licensed Plumbing Inspector in February of 2020 and there was no appeal to the permit at that time.

Mr. Sutton responded to Mr. Cunningham that Sandy Cove Road extends across the Jones property to the Sutton boundary and his deeded right-of-way is from Dunn Road to the Sutton property line. It is not reasonable to assume that the width of the right-of-way across Jones is anything *except* 30 feet.

Richard Sutton spoke on behalf of the Sutton application stating that installing septic out of code on a piece of property that can't support it by dumping your effluent onto a neighbor's property because there is no room on your land violates the conditions of the SZO that the Planning Board is charged uphold.

There being no further discussion, on motion duly made and seconded (Bourne/Bonar), the public portion of the Sutton hearing was closed. YES 5/NO 0.

The Board of Appeals entered deliberations and did not come to decision on either matter.

The Board of Appeals requested its attorney, Mr. Katsiaticas, to draft findings of fact and conclusions of law based on deliberations at this meeting and to submit these for the board members' review prior to the next meeting.

The Board of Appeals and all parties present or represented agreed to meet on January 13, 2020, at 1 PM. The meeting will be conducted on Zoom.

On motion duly made and seconded (Dick Bourne/Norma Blazer), the meeting was adjourned at 9:02 PM. YES 5/NO 0.

Norma Blazer

Secretary