

**DECISION and ORDER
TOWN OF ST. GEORGE ZONING BOARD OF APPEALS**

**In Re: HEIDI NAUGHTON
TAX MAP 234, LOT 33**

The Zoning Board of Appeals convened on June 11, 2020, to hear the appeal of Heidi Naughton dated February 28, 2020, relating to the February 21, 2020, letter from the Code Enforcement Officer of the Town of St. George which ordered the Appellant to stop work on the project effective February 21, 2020. The Stop Work Order recited Section 12.C. (4) in Chapter 1000 of the Shoreland Zoning Ordinance of St. George, which prohibits the removal (regardless of the cause) by more than fifty (50%) percent of the market value of a structure before such removal unless and until a property owner has obtained a permit from the Planning Board, such that the structure has been set back from the water body to the greatest extent practical; this section applies if a structure is within the 75 foot setback from the water body.

In this matter, it appears that the Planning Board issued a permit based on the application of the Naughton's to "renovate" the structure, consistent with architectural plans submitted. In the Application form submitted, the project description states, *"This project is a renovation to an existing two story single family cottage. The project seeks to renovate both floors including a renovated stair and expansion of the second story space."* The Appellants object to the Stop Work Order and raise Equitable Estoppel as a defense related to alleged statements made by the Code Enforcement Officer, and minutes of the Planning Board, which induced them to become non-compliant with Section 12.C. (4) of the Shoreland Zoning Ordinance.

Sitting for the Board as voting members ^{6:20 PM} was Chair, Steve Miller, William Reinhardt, Sandra Roak, Frederic Carey and Richard Cohen. The Code Enforcement Officer was

represented by Attorney Mary Costigan. The Appellants were represented by Attorney Patrick Mellor. The Zoning Board of Appeals was represented by Attorney William Kelly. At the outset, the parties confirmed that the controlling section of the Ordinance for this appeal is found in Section 16, Administration, sub-section H(1)(a) and H(3), which when read together require an appellate record review and not a de novo hearing in this matter. The record for review in this matter consisted of materials that had been before the Code Enforcement Officer, which included the Planning Board Permit file, which included all of the Appellant's submissions to the Planning Board including design plans, the Notice of Violation, the Appeal Application with attachments, the Stop Work Order dated February 21, 2020, the Building Permit dated October 9, 2019, and photographs of the state of the premises on or about February 21, 2020 (which photographs were submitted by the Code Enforcement Officer Patrick Mellor by agreement at the Hearing. Said photographs are attached hereto as Exhibits A and B for ease of access in the future. Said photograph taken by Attorney Mellor is identified as Exhibit A and the photographs taken by Terry Brackett are identified as Exhibit B.

The Appellants presented their case primarily through Attorney Patrick Mellor and his presentation was consistent with the written materials that were attached to the application for Appeal in this matter alleging estoppel vested rights and that the Minutes of the Planning Board Meeting of October 8, 2019, which were attached as Exhibit C in the Appeal materials from Mr. Mellor reflect on Page 7 therein that the Planning Board had found that the provisions of Section 12.C. (4) regarding reconstruction and replacement did not apply to the application then pending before them. No one from the Planning Board testified as to the meaning of these Minutes as to whether that was a legal conclusion or was based upon the facts that were presented to the Planning Board, in terms of the intent and scope of the work, as intended by the applicant. Mr.

Mellor argued that the references to section 12.C.(4) in the Planning Board minutes demonstrated that the Code Enforcement Officer was without authority to cite the Appellants in the February 21, 2020 Stop Work Order. Mr. Mellor also had the architect and builder testify as to conversations that they had with the Code Enforcement Officer before, during and after the Planning Board Permit approved the Use Permit.

On behalf of the Town, Code Enforcement Officer Terry Brackett testified as to his understanding of the Planning Board's actions and the application §12.C.(4), regarding the removal of more than fifty (50%) percent of the value of the structure. Terry Brackett testified that clearly more than fifty (50%) percent of the value of the structure had been removed. On cross-examination of the Appellant's architect by attorney Mary Costigan, he confirmed that it was reasonable to conclude that more than fifty (50%) percent of the value of the structure had been removed as of February 21, 2020. It was clear during the deliberations of the Board that the depiction of the photographs marked as Exhibits A and B demonstrated that more than fifty (50%) percent of the value of the structure (which structure was depicted in photographs pre-construction as taken by the Appellant). The Code Enforcement Officer also testified that a permit is issued by the Planning Board and the builder and owner are left to determine how they go about renovating the structure. The Planning Board is comprised of lay people who do not address or dictate construction techniques as to how much of the building needs to be removed while construction is progressing to the final intended purposes and design. The Code Enforcement Officer stressed that the application sought "renovation" not demolition and certainly not entire removal of the building except for the chimney and floor framing and floor boards (except for a small room which is still standing as depicted in the photographs – this room was described as an "ell" by the architect.)

After the evidence was closed, the Board began its deliberation, and the discussion was centered around the obvious and clear conclusion that the “before and after” photos of this structure certainly demonstrates that the §12.C. (4) threshold of removal of fifty (50%) percent or more of the value of the structure had occurred. Effectively, there is no disagreement about that based on the testimony by the Code Enforcement Officer, the architect and the observations of the Board of Appeals. The Board essentially discussed that there was no clear evidence that the reference in the Planning Board Minutes to section 12.C. (4) compelled a finding that the Code Enforcement Officer was without authority to issue a Stop Work Order. To the contrary, there was testimony that *after the permits were issued by the Planning Board and the Code Enforcement Officer*, new information came to awareness of the owner and the builder as to the integrity of the framing and integrity of the foundation. This information was the subject of discussion for the Code Enforcement Officer on at least two occasions but at no time did the Code Enforcement Officer understand in those discussions that the removal of the building would be required, as depicted on February 21, 2020, in Exhibit B. The Code Enforcement Officer testified that the Planning Board had no such awareness or discussion or knowledge as to a removal program which would remove the structure down to the floorboards, and would further require reconstruction of the foundation. These findings were discussed by several *members of the* ~~Zoning~~ Board of Appeals.

Richard Cohen, seconded by Sandra Roak, moved to deny the appeal. The Motion to deny the appeal was approved unanimously, five to zero.

The Board then described its findings in support of the Decision to deny the Appeal upon Motion by Fred Carey and seconded by Richard Cohen, as follows:

1. The photographic evidence shows the extensive work that was done regarding the removal of the structure, which was compelling;

2. The Appellants, upon learning new information regarding the amount of demolition and removal that they desired in order to accomplish their design plans, when discovered after permits had been issued, should have filed a new application in front of the Planning Board to address section 12.C. (4) and the requirement of relocating the property outside of the minimal seventy-five (75') foot setback area "to the greatest extent possible", which the Appellant failed to do;

3. It was unreasonable to claim that one could tear down the structure to the floor level leaving just the small ell and claim that it was just a "renovation" when it clearly was a removal and "Reconstruction or Replacement under section 12.C. (4);

4. By rough quantification, the house had been removed to approximately ninety (90%) percent to ninety-five (95%) percent of the value of what had been there before and was now laid waste to the foundation level, representing a removal of more than fifty (50%) percent of the value of the building, thus triggering review under §12.C. (4);

5. The Board found that the Code Enforcement Officer acted within his authority in issuing the February 21, 2020, Stop Work Order for the reasons described above.

These finding of fact were approved in a vote of 5 to 0.

The Appellants are hereby notified pursuant to Section 16.H.(5) that they have the right to appeal within forty-five days of the date of the decision of the Board of Appeals, which was June 11, 2020, consistent with Rule 80B of the Maine Rules of Civil Procedure.

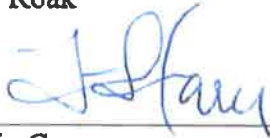
Approved ^{June} on ~~May~~ 18, 2020, at a duly notice Board of Appeals meeting.


S.V.M.


Steve Miller, Chair


William Reinhardt


Sandra Roak


Frederic Carey


Richard Cohen.