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UNAPPROVED MINUTES

OGUNQUIT ZONING BOARD OF APPEALS MEETING MINUTES SEPTEMBER 24, 2015

CALL TO ORDER - 6:00 PM

Members Present: Jay Smith - Chairperson
 Peter Griswold - Secretary
 Mike Horn
 Doug Mayer
 Jerry DeHart (1st Alternate)

Members Excused: Glenn Deletetsky - Vice Chair

Also present: Scott Heyland, Code Enforcement Officer
 Maryann Stacy, Recording Secretary
 Steven Perkins, Applicant
 Danielle Perkins, Applicant's Representative

Mr. Smith noted that a quorum was present.

Mr. Smith noted that due to the absence of Mr. Deletetsky Mr. DeHart would be a full voting member.

ACCEPTANCE OF MINUTES – August 27, 2015

Mr. Griswold Moved to Approve the Minutes of the August 27, 2015 Meeting as Amended. GRISWOLD/HORN 4:0 UNANIMOUS (Mr. DeHart was Excused from the August 27, 2015 meeting).

UNFINISHED BUSINESS – None

NEW BUSINESS –

Mr. Smith asked if there was anyone on the Board who felt he had a conflict of interest sufficient to disqualify him from hearing and voting on this application in an impartial manner. There was no one.

Mr. Smith asked for confirmation from the Board members that the Board had standing to hear this case. It was confirmed that it did.

1. JUDITH & STEVEN PERKINS – 31 Captain Thomas Road (Map 13 Block 10) Rural Residential District 1 (RRD1). Variance Appeal under Article 5.2.B.2.a – Request to expand first floor living space: three feet on the rear of the house and eight feet on the front of the house, for an additional 336 square feet.

Danielle Perkins addressed the Board as the Applicants' representative. Ms. Perkins reviewed the standards under Article 5.2.B.2.a of the Zoning Ordinance which is the standard the Applicants are basing their appeal upon.

Ms. Perkins referred the Board to item i (there is not such section i) under 5.2.B.1.a which states that "the board may grant a variance only from the dimensional requirements relating to lot area, lot coverage, frontage, height and setback requirements of this ordinance, subject to the specific limitations and restrictions found below in this section." Ms. Perkins informed the Board that her parents' lot has some unique circumstances which she will cover.

The second standard Ms. Perkins asked the Board to consider is Article 5.2.B.1.b which she stated does not apply in this case as the use is a conforming use in the RRD1.

The third standard Ms. Perkins asked the Board to consider is Article 5.2.B.1.c. She informed the Board that the Applicants will be happy to modify any of the designs based upon the decision of this Board's proceedings.

Ms. Perkins informed the Board that the Applicants are not required to respond to Article 5.2.B.1.d due to the fact that no portion of the Applicant's property falls within a shoreland zone.

Ms. Perkins informed that the Board that the Applicants are seeking to increase the first floor living space of the home. She noted that Mrs. Perkins has several medical conditions and while the Applicants are not basing their application on a disability variance it is part of the context of their argument. She noted that climbing stairs has become a challenge.

There are two areas of the property where the Applicant's are seeking to increase living space. The first is at the rear of the house where they are seeking to expand an existing outdoor porch. Ms. Perkins noted that existing setbacks would disallow the expansion to extend in line with the house. It would require the construction to come in several feet from the back of the house, which would be cost prohibitive.

At the front of the house, the Applicants have determined that the Captain Thomas Road was moved in the past. Ms. Perkins noted that there is documentation in a 1972 deed (Book 100 Page 6 filed at the York County Registry of Deeds), which she only was informed of ten minutes prior

to the meeting. The conflict is that the street was originally much closer to the front of the house. The current location of Captain Thomas Road is several feet further from the house front. Under Maine State Law M.R.S.A Title 23 the Applicants are claiming ownership of the property due to its abandonment by the Town. Ms. Perkins noted that the Applicants, and not the Town, have been maintaining the property for over thirty years.

Ms. Perkins noted that under M.R.S.A title 23, which states that "...Upon approval of the discontinuance Order by the legislative body, and unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained and all remaining interests of the municipality shall pass to the abutting property owners to the center of the way...".

Ms. Perkins asserted that this would allow the Applicants to claim an extension of the front property line several feet further away from the front of the house and allow them to legally expand the front living space of the structure.

Mr. Griswold asked if the gray portion indicated on the survey map is blacktop.

Ms. Perkins confirmed that it is.

Mr. Mayer clarified that the plans indicated the Applicant's property designation as Map 13 Block 9 when in fact it is Map 13 Block 10.

Mr. Mayer asked why the abutting house was indicated in red on the survey and if it is relevant to the project.

Mr. Robin Muir (the Applicant's architect) responded that the application involves Block 10 and there is no relevance to the structure on the abutting property.

Mr. Smith asked Ms. Perkins how many square feet are included in the "abandoned" portion of the town road which might be claimed by the Applicants and added to the square footage of their property by extending the front boundary line outward.

Ms. Perkins responded that it would extend the front property line outward by 9.5 to 11 feet.

Mr. Smith responded that if the Applicants intend to claim that "abandoned" property as part of their lot there is a due process for legally having it added to the parcel. He asked if the Applicants have gone through the legal process for claiming that land.

Ms. Perkins responded that they have not, however it is their understanding that should they do so they will be able to claim the land as part of their parcel.

Mr. Smith noted that the relevance of the "abandonment" is whether the Applicants will be able to meet the front setbacks or if they will have to request a relaxed dimensional standard for that setback. Mr. Smith noted that the front setback is only one issue with this property. It will also effect the lot coverage calculations.

Mr. Smith informed Ms. Perkins that the Board will be unable to include the “abandoned” land as part of the lot coverage for the parcel.

Mr. Smith asked if the Applicants have calculated the square footage of the “abandoned” land they intend to claim.

Ms. Perkins responded that they have not.

Mr. Mayer added that if the Applicants were able to legally claim that front land it might negate their need for a front setback variance. He also noted that the Ogunquit Zoning Ordinance definition of “lot” is a parcel of land for which a description has been recorded at the York County Registry of Deeds. Mr. Mayer suggested that if this has not been done for the “abandoned” land, the Applicants might want to look into this.

Mr. Horn noted that there are discrepancies between the applicant’s site plan and the surveyor’s map. He asked which calculations are correct.

Mr. Muir responded that the small map is an earlier product and the Board should discard it and use the surveyor’s map.

Mr. Horn asked if the driveway is an impervious paved area. He noted that if it is paved it adds to the lot coverage calculations.

Ms. Perkins responded that it is paved.

Mr. Muir added that the surveyor only mapped what is there in relation to the property lines and they did not include the “abandoned” land out front as part of their calculations.

Mr. Smith asked if the existing driveway is impervious pavement.

Mr. Muir confirmed that it is asphalt. He added that there is a curb on the road’s edge which the town put in place.

Mr. DeHart noted that the surveyor indicated that calculations were made to the foundation corners. He (Mr. Dehart) pointed out that the calculations have to be to the structure’s overhang, not to the foundation corner. He questioned the numbers and asked if they would change if calculated to the overhang and not the foundation.

Mr. Muir responded that the overhangs of the house are minimal, 6” to 8” at most. He asked the Board to refer to the photographs in the application packet. He added that the setback calculations were done from the overhangs, and the square footage from the foundations.

Mr. Smith questioned how the applicant came up with 9,241 square foot lot coverage, he (Mr. Smith) suggested that the house footprint, the deck footprint, and the garage footprint add up to 1,250 square feet. If the 9,241 square footage is correct it creates a 13.5% lot coverage which exceeds the allowable 10% in the RRD1.

Mr. Smith stated that if the Board were to approve the variance request it would need exact numbers to properly record the deed. However lot coverage is only one of several points which will need to be clarified. He asked if the existing garage will remain or be removed.

Mr. Muir responded that the garage will be removed, if necessary, to gain additional square footage for the house.

Mr. Smith noted that if the garage is removed the Applicant would gain the 308 square feet which could be used to gain the lot coverage for the house expansion.

Mr. Mayer asked Ms. Perkins if she agrees that this is a legally non-conforming lot.

Ms. Perkins agreed that it is.

Mr. Mayer asked if Ms. Perkins agrees that the structure as it exists today is a legally non-conforming structure because it does not meet setbacks.

Ms. Perkins agreed.

Mr. Griswold asked if the “abandoned” land from the north edge of the current property line to the bitumen curb would be continued to be paved if the Applicants are legally able to obtain it.

Ms. Perkins responded that it is their intent to leave it as it is.

Mr. Griswold asked what would replace the garage, if it is removed? Grass, asphalt, ...?

Ms. Perkins responded that the Applicants will do whatever is needed to satisfy the lot coverage requirements.

Mr. DeHart asked for clarification of the lot coverage of the existing lot.

Mr. Smith asked the Code Enforcement Officer if the paved portion of the lot is part of the formula for lot coverage.

Mr. Heyland responded that it is. This property is located in RR1 which covers: buildings, structures, sheds, and decks, including overhangs. Nothing else is part of the equation.

Mr. Heyland added that the existing garage foot print, at 368 square feet is proposed to be replaced by 338 square feet of house expansion. This is a net reduction in the lot coverage. He summarized that the parcel currently has a legally non-conforming condition of 13.5% lot coverage, which is allowed to be legally existing. He would allow the exchange of lot coverage as long as the end result does not exceed the 13.5%. If the garage is removed, and the applicants are granted the setback variances, there will be no net increase in lot coverage.

Mr. DeHart asked if paving does not matter here.

Mr. Heyland confirmed that it does not.

Mr. Smith summarized that as long as the garage comes down the proposed expansion of the house will not exceed the existing 13.5% lot coverage which satisfies that portion of the application.

Mr. Smith moved on to the three requests for relaxed dimensional standards. He reminded the Applicants that the Board may move forward with the setback requests however the “abandoned” land on the front of the lot may not play a part in the Boards discussions or decision.

Mr. Smith suggested that there is no ability of the Applicants to take that land by eminent domain, however the Ordinance speaks to due process which would allow the Applicants to claim the land. This would require an amendment to the deed and registration of the amended deed at the York County Registry of Deeds before the Applicants may legally claim it.

Mr. Smith stated that there are still the remaining issues of setback violations on both sides and the front of the property.

Mr. DeHart asked if the Applicant might want to table the application process until they resolve the legal ownership of the front piece of “abandoned” land.

Mr. Smith informed the Applicants that they currently do not have the legal right to claim the land in front of their property. They do have the right to pursue having it added to their lot. Mr. Smith stressed that the Board will need exact square footage of that additional piece and how it will impact the square footage of the existing parcel.

Mr. Smith pointed out that there is a law which states the distance, the Town owns, from each side of the center line of the road, and residents may not encroach on that. He stressed that the Applicant will need to have their deed changed. He suggested they review the Town Ordinance’s language for obtaining a Declaration of Relief.

Mr. Smith informed the Applicants that they will need to find out the proper protocol for claiming “abandoned” land, and they will need to legally claim it and register an amended deed at the Registry of Deeds.

Mr. Smith also pointed out that the Board may continue on with discussion and vote on the other setback variance requests. They would have to do this without clarity as to how much land the Applicant will gain on the front.

Mr. Horn Moved to Defer this Hearing until the Applicant can obtain legal proof that they own the “abandoned” piece of property at the front of (Map 13 Block 10).
HORN/GRISWOLD

Mr. Smith informed the Applicants that they are currently asking for four dimensional setbacks. With the legal clarification of the front setback, they will come back before the Board with a request for at least three setback variances. The deferring of the hearing will not guarantee that the other three setback variance requests will be granted. He stressed that even if the front property line is corrected there is a chance the application may be denied for other reasons.

There was some discussion as to whether or not the Applicants' agreement is needed to delay the hearing. It was agreed that the Board has the authority to defer a decision until such time as additional information is obtained and presented to them.

Mr. Smith restated Mr. Horn's Motion:

Mr. Horn Moved to Defer this Hearing until the Applicant can obtain legal proof that they own, or do not own, the "abandoned" piece of property at the front of (Map 13 Block 10). HORN/GRISWOLD 5:0 UNANIMOUS

Mr. Smith informed the Applicants that this application will come back before the Board at the earliest opportunity, after the Applicants provide the Land Use Office with documentation that the "abandoned" piece of land will either be legally claimed by them, or not.

CODE ENFORCEMENT OFFICER BUSINESS – None

OTHER BUSINESS –

Mr. Smith recommended that Board members attend the Maine Municipal Associations training seminar at the end of October 29, 2015.

ADJOURNMENT -

**Mr. Mayer Moved to Adjourn at 7:00 p.m.
MAYER/GRISWOLD 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Recording Secretary