



MUNICIPAL OFFICES
23 SCHOOL STREET • P.O. BOX 875
OGUNQUIT, MAINE 03907-0875
(207) 646-5139 General Offices
(207) 646-9326 Land Use
(207) 646-9546 Town Clerk
E-mail: townofogt@maine.rr.com

OGUNQUIT ZONING BOARD OF APPEALS MEETING MINUTES JULY 31, 2014

CALL TO ORDER - 6:00 PM

Members Present: Jay Smith - Chairperson
Glenn Deletetsky - Vice Chair
Mike Horn
Doug Mayer
Jerry DeHart (1st Alternate)

Members Excused: Peter Griswold

Mr. Smith noted that a quorum was present.

ACCEPTANCE OF MINUTES – February 27, 2014

**Mr. Horn Moved to Accept the Minutes as Amended.
HORN / DELETETSKY 4:0 UNANIMOUS**

UNFINISHED BUSINESS - None

NEW BUSINESS –

- 1. Charles and Jennifer Lovett – 59 Ledge Road – Map 6 Block 105 – Variance Appeal. Appeal of the Code Enforcement Officer’s April 25, 2014 Denial of a request for an After-the-Fact Building Permit to locate a 10’x12’ storage shed within the parcel’s fifteen foot (15’) side and rear setbacks, and his requirement that the shed be removed or brought into zoning compliance.**

Mr. Smith asked if there was any Board member who felt he had a conflict sufficient to disqualify him from hearing, discussing, and deciding this case.

Mr. DeHart responded that he is a direct abutter of the applicant’s property and would like to be excused.

The Board unanimously agreed to excuse Mr. DeHart from hearing this case.

Mr. Smith noted that Mr. Dehart's conflict is not of a financial nature, and as an abutter he may remain in the audience.

Mr. DeHart left the Board table but remained in the auditorium.

Mr. Smith asked for confirmation that the Board had standing to hear this case. It was unanimously agreed that it did.

Mr. Horn pointed out that the caption for the case, as posted on the agenda, may be somewhat misleading. He noted for the record that the Applicant is requesting a Variance not an Administrative Appeal of the Code Enforcement Officer's denial.

It was agreed that the Application was submitted, by the Appellant, as a Variance Request and not an Administrative Appeal and the Board would hear and decide it as a Variance Request.

Mr. Smith asked the Appellant to present his case.

Charles Lovett addressed the Board. He acknowledged that the shed was installed in February of 2014 without a permit. He was unaware at that time that a permit was required. He purchased his property in 2012 knowing that he would need a shed because the house has no basement or crawlspace. There was a shed in place at the time he purchased the property, it was in disrepair and he removed that shed and installed the new one. After the new shed was in place he received a notice from the Code Enforcement Officer informing him that it was in violation and needed to be moved.

Mr. Lovett provided the Board with letters from his abutters who all agree that they have no problem with the shed in its current location.

Mr. Lovett informed the Board that there is a patio on the other side of the house, and while the shed might be placed up against the house it would block the windows. The only location for him to place the shed is in its current location, any other location would look "out of place".

Mr. Horn asked the Applicant where the original shed was located, and if the new shed could be placed in the same location.

Mr. Lovett responded that the original shed was on the left side of the house, roughly in the same location as the new shed only on the other side of the house. The new shed would fit there but he wanted to "make it look right" and the new location is where a garage would be if there was a garage, it lines up with the driveway.

Mr. Mayer asked where the septic system is located.

Mr. Lovett responded that the original shed was just in front of the septic tank.

Mr. Smith asked Mr. DeHart if, as an abutter, he had any comments.

Mr. DeHart responded that he did not.

Mr. Smith asked if there were any other questions. There were none and the public portion of the hearing was closed at 6:20 p.m.

Mr. Smith summarized that this case involves a single family house in the Residential District. The primary residence is conforming as to lot coverage, building height, and setbacks. The Lot however is Non-conforming, however this is not relevant to the shed in question.

Mr. Smith suggested the Board look at the definitions of: “accessory buildings” which includes sheds, and the definition of “structures” which also includes sheds. Thus the shed in question is defined as a structure and must meet all the dimensional requirements of the setbacks of the zone in which it is located. As a Variance Request for a property outside the Shoreland District the Board will apply the criteria of Section 5.2.B.2 of the Zoning Ordinance. Mr. Smith asked the Board if there were any other relevant points which should be considered prior to reviewing the six requirements for a Variance as noted in Section 5.2.B.2.

Mr. Horn responded that he would like to review the timeline regarding the placement of the shed on the property. He summarized that:

Sometime prior to February 14, 2014 the shed was placed on the Appellant’s property without the required Building Permit. The shed, in its current location, is in violation of the side and rear setbacks.

On February 25, 2014 the Appellant was notified by the Code Enforcement Officer that the shed was in violation of the setbacks and had to be relocated or removed.

On March 18, 2014 the Appellant submitted an incomplete Building Permit Application, which was denied.

On April 9, 2014 the Code Enforcement Officer requested a site plan indicating the exact location for the minor accessory structure (shed).

Mr. Horn noted that a site plan is required for an accessory structure and should be accompanied by a standard boundary survey. He noted that the site plan must indicate the exact location of the shed with respect to the setbacks. Mr. Horn pointed out that the Board only received a hand drawn sketch of the property, and has not received a standard boundary survey.

Mr. Smith responded that regardless of the quality of the site plan, the Code Enforcement Officer is unable to approve the Building Permit because a variance is required and he cannot authorize a variance, only the Zoning Board of Appeals can do that.

Mr. Smith referred to the Sketch of the property dated July 3, 2014 which does not indicate the dimensional scale, however he (Mr. Smith) determined, using a ruler, that the scale is approximately 1" = 20' and using that scale it is clear that the shed is well within the side and rear setbacks. He noted that the map in question is reasonable enough so that the Board can use it to base a discussion and decision.

Mr. Heyland added that if a variance is granted the Board will have to determine a specific relaxational dimension. He noted that the Application does not specify the exact amount of feet requested.

Mr. Smith asked if Mr. Heyland had advised the Applicant to provide a specific distance for his variance request.

Mr. Heyland responded that he requested a Site Plan and received the included sketch plan. He subsequently contacted the Applicant informing him that it was inadequate.

Mr. Horn agreed that the Board does not have a request for a variance in feet.

Mr. Smith agreed that normally an applicant requests a specific distance for a variance. An example would be that the setback requirement is fifteen feet and the applicant wants to put the structure two feet from the property line so he is asking for a thirteen foot variance. This type of information was not provided in this case, which means that the Board is dealing with incomplete data. A final approval for a variance must specify the number of feet that the Board has approved which becomes a codicil to the deed, so that the specific change in the setback will never be contested by any future neighbor. What is missing in this case is the exact amount of the requested variance.

Mr. Smith suggested that the Board might deny the request due to the lack of exact dimensional relaxation numbers, or the Board might consider whether or not it wants to send the Applicant away only to have him return with the same application with a more detailed site plan.

Mr. Horn added that the definition of a minor accessory structure shall be accompanied by a standard boundary survey.

Mr. Smith suggested the Board might rule on the case without the exact relaxation dimensions, however he pointed out that the six standards in Section 5.2.B.2 must all be met in order for the Variance to be granted and it is unlikely that this application will pass all of them.

Mr. Mayer asked if the applicant was aware of the six standards which must be met and how difficult they are to pass.

Mr. Smith agreed that it will be difficult for the Board to approve this application. He noted that the primary thing which is lacking is a specific dimensional outline of the shed in the context of the overall site plot. The application is also lacking the exact dimensional standard which is being requested. He asked if the applicant was aware of the standards in Section 5.2.B.2.

Mr. Lovett confirmed that he is aware of them.

Mr. Horn asked if there is any setback required between an accessory structure and another building.

Mr. Heyland responded that there is not. The only required separation between two buildings is between two primary uses, such as two single family homes on one lot.

Mr. Deletetsky asked if a mortgage survey would suffice.

Mr. Heyland responded that he would have to look that up in the Ordinance. He suggested that if the appellant could estimate how many feet he needs, and if that specific variance is granted, he (the Applicant) would have to meet that distance. This would allow the application process to proceed.

Mr. Lovett responded that the shed is two feet from the rear and side property boundary lines.

Mr. Heyland asked if he is requesting a thirteen foot variance from both the rear and side lot lines.

Mr. Lovett confirmed that he is.

Mr. Heyland suggested that if the Board were to proceed with that description he would require a boundary survey as part of the Building Permit process. Assuming the Variance is granted.

Mr. Smith suggested that the Board might take the Appellant's verbal input that he is asking for thirteen feet of variance on the side and rear setbacks. Mr. Smith noted that this can be assumed from the drawing. He also noted that the minor accessory nature of the building allows the Board some leeway to proceed. If the Board is to agree with the Appellant's verbal amendment made during the meeting that the requested variance is thirteen feet from the rear and side setbacks, they might proceed.

The Board agreed to proceed with the Appellant's verbal amendment, and began the review of the Variance Appeal Standards under Section 5.2.B.2 - Relaxed Dimensional Standards Variance, Available Outside of Shoreland Zones:

- i. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;*

Mr. Smith noted that this standard addresses the topographical nature of the property: ledges, wetlands, etc.

Mr. Deletetsky agreed that the Board has always taken the position that "unique circumstances" are not manmade, they are natural characteristics that man has no control over: things like ledge rock, wetlands, brooks, and streams.

By a show of hands the Board unanimously agreed that this standard has not been met, because the property is not unique.

- ii. *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally effect the use or market value of abutting properties;*

By a show of hands it was unanimously agreed by the Board that this standard has been met, and the shed would not change the character of the neighborhood.

- iii. *The practical difficulty is not the result of action taken by the petitioner or a prior owner;*

Mr. Smith suggested that the difficulty was created by the owner who placed the shed in an illegal location.

By a show of hands the Board unanimously agreed that this standard had not been met, because the difficulty was created by the owner who chose to place the shed in its present location for convenience and esthetic reasons, and that there are other, less desirable but legal locations where the shed could be located.

- iv. *No other feasible alternative to a variance is available to the petitioner;*

Mr. Smith asked if the shed could be placed anywhere else on the property without the granting of a variance.

Mr. Deletetsky stated that it is his belief that the shed could be placed elsewhere on the property, the new location might not be as desirable but it would be legal.

Mr. Horn noted that the shed could be placed over the septic system, as confirmed by the Code Enforcement Officer.

Mr. Smith agreed that there is an alternative location, it may not be desirable but it is feasible.

Mr. Lovett responded that on the back left corner of the property, where the leach field is, there are several large trees in the location the Board is discussing, which he is reluctant to cut down. He could put the shed in the front yard however his yard blends into the public park and having the shed there would detract from the appearance.

Mr. Mayer asked who put in the patio.

Mr. Lovett responded that there was a deck which he had to remove due to rot and he replaced it with the patio. His primary goal was to make his property blend in with the neighborhood and the public park.

Mr. Smith asked if there were any regulations about putting the shed over the leach field.

Mr. Heyland responded that it is illegal to put anything over a leach field, the shed could be placed over the septic tank as long as it does not block the access ports.

By a show of hands it was unanimously agreed by the Board that this standard has not been met because there are other locations where the shed could be located. The other locations may not be as desirable but they are feasible and would be legal.

- v. *The granting of a variance will not unreasonably adversely effect the natural environment;*

By a show of hands the Board unanimously agreed that this standard has been met and that the granting of the variance would not adversely effect the natural environment.

- vi. *The property is not located in whole or in part within the shoreland zone.*

By a show of hands it was unanimously agreed by the Board that no portion of this property is in the shoreland zone, thus this condition is met.

**Mr. Horn Moved to Deny the Variance based upon Standards: i, iii, iv not being met.
HORN/DELETETSKY 4:0 UNANIMOUS**

Mr. Smith advised the Appellant that the Variance has been denied.

Mr. DeHart resumed his seat with the Board.

CODE ENFORCEMENT OFFICER BUSINESS – Mr. Heyland informed the Board that he will send the Applicant a letter requesting a standard boundary survey with the proposed new location of the shed indicating that the setbacks have been met. If he doesn't receive that he will order that the shed be removed.

Mr. Heyland advised the Board that the next case, which will be heard on August 28th involves a setback reduction request for a deck structure. The applicant in that case is requesting the full fifteen feet.

Mr. DeHart expressed the importance that Applicants are fully informed of the difficulty of obtaining a variance and the strict nature of the six standards which must all be met.

Mr. Heyland responded that he makes certain that applicant's are aware.

Mr. Deletetsky added that it is also important for the applicants to know that the Board is legally bound to follow those standards.

Mr. Smith also pointed out that letters from abutters in support of the application may not be relevant to the Board's ultimate ability to grant a variance. Future abutters may not feel the same way as current abutters.

Mr. Heyland agreed that setbacks are in place to protect future abutters too.

OTHER BUSINESS – None

ADJOURNMENT –

Mr. Deletetsky Moved to Adjourn at 7:05 p.m.
DELETETSKY/HORN 5:0 UNANIMOUS

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Zoning Board of Appeals
Recording Secretary

Approved on August 26, 2014