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OGUNQUIT ZONING BOARD OF APPEALS MEETING MINUTES AUGUST 28, 2014

CALL TO ORDER - 6:00 PM

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

Also present; Scott Heyland, Code Enforcement Officer

Mr. Smith noted that a quorum was present.

ACCEPTANCE OF MINUTES – 31 July 2014

**Mr. Horn Moved to Accept the Minutes of the July 31, 2014 Meeting as Amended.
HORN/GRISWOLD 5:0 UNANIMOUS**

UNFINISHED BUSINESS - None

NEW BUSINESS –

Jim Manning and Barbara Dailey – 22 Russell Way – Map 15 Block 53 Lot 5 – Variance Request Under Article 5.2.B.2.a – Request for a Fifteen Foot (15') Dimensional Standards Setback Relaxation to construct a deck, egress doorway, and exterior stairs at the rear of a single family dwelling, and extending to the property line.

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

Mr. Smith asked if there was any Board member who had a conflict of interest sufficient to disqualify him from hearing and deciding this case in an impartial manner.

There were no conflicts.

Jim Manning addressed the Board. Mr. Manning asked the Board for a Variance to build a deck at the rear of his home.

Mr. Manning reviewed the standards of Section 5.2.B.2.a and provided his reasoning as to why he meets each standard and should be granted a variance:

i. The unique shape of his property is restrictive. His lot has no extra land behind the house. There is almost exactly fifteen feet from the rear of the house to the property line. He also has no egress to the back of the property without going through the basement or the garage. The house is 88' long and at its narrowest point it is only 14' wide. Mr. Manning noted that there is extra land on the side of the property which would meet the setbacks, however he believes this to be wetlands and the Windward Association prevents him from building anything there. He would like to build a deck that is 15' deep and 16' wide which would include an egress door and stairs to ground level.

ii. Mr. Manning noted that the abutters shouldn't be able to see the proposed deck. He noted that the rear abutters are over 150' away and there are woods between them. He also noted that the condominiums behind him are 30' lower in elevation. The rear of his lot is flat and drops off abruptly at the rear abutters' property line. He also confirmed that the Windward Association has given permission for the deck.

iii. Mr. Manning stated that the house was built in 2005 and nothing has been done since then.

iv. Mr. Manning noted that there is no other place on the house where he could add a deck. The 88' on the back side of the house has a bedroom, two bathrooms, and a living room where he would add the deck and the egress door. This is the only place where he would do something like that.

Mr. Manning informed the Board that he had the property surveyed and discovered that he owned more than he thought he did. He worked with the Code Enforcement Officer to see if he could purchase land from abutters to make the proposed deck work. The abutters are unable to give up any of their land because that would make them nonconforming.

v. Mr. Manning noted that the area in question is a grassy area and no trees have to be removed. The deck would be an open air deck with no impact on the natural environment.

vi. Mr. Manning confirmed that no portion of the property is located in the Shoreland Zone.

Mr. Manning stated that another reason they are asking to place the deck at the rear of the house is that a member of his household has a medical condition and requires access to exposure from direct morning sunlight, particularly in the winter and fall.

Mr. Horn asked where the stairs to the deck would be located.

Mr. Manning responded that they would be contained within the 15'x16' area, and would be on the left side of the deck and connect to existing steps which lead to a stone patio

Mr. Horn noted that the total acreage of the lot is 24,000 square feet and thus there is no problem with lot coverage.

Mr. Smith confirmed that it is a conforming use and a conforming building.

Mr. Mayer confirmed that the existing house currently has four bedrooms and that would not change.

Mr. Mayer suggested that the Board cannot prevent egress and that a door and stairs might be built without the deck.

Mr. Griswold asked what the Windward Association's jurisdiction is regarding the land to the south of the Manning house.

Mr. Manning responded that he did not know, he believes it is wetland. He knows he cannot do anything there.

Mr. Smith asked if the basement is a finished basement.

Mr. Manning responded that it is not.

Mr. Griswold asked about the family members needing access to morning sunlight.

Mr. Manning responded that they are very private people and he is reluctant to discuss this issue.

Mr. Mayer asked if the abutter to the right of the Manning house is in the same situation, where the side of the house is right at the 15' setback boundary.

Mr. Manning agreed that it is the same. They do have a deck out back but nothing to the side.

Mr. DeHart asked if Mr. Manning was aware of the medical condition prior to purchasing the house.

Mr. Manning responded that the diagnosis was made about a year after they purchased the house.

Mr. Smith asked if there were any additional questions. There being none the public portion of the Hearing was closed and the Board went into discussion.

Mr. Smith summarized that this application involves a conforming building with a conforming use, which currently meets all dimensional requirements. He went on to say that the Board will need to look at the definition of "structures" and that a deck is considered to be a structure. The Board would also need to review Table 703.1 which requires a fifteen foot (15') rear setback,

which the house currently meets. The Zoning Ordinance is relatively strict as to what is allowed in the setbacks.

Mr. Smith stated that in order for this variance request to be approved it requires a relaxation of dimensional standards and must meet all of the standards in Section 5.2.B.2.a.

Mr. Horn reminded the Board members that the Appeals Board must limit any variances granted as strictly as possible. He noted that this application involves a major variance request of fifteen feet.

Mr. Mayer suggested that egress and egress steps are not considered “structures” and would not be considered in this application. The only element under consideration is the deck.

Mr. Smith responded that it was his opinion that the deck is a structure and anything attached to it, such as the steps, would be included.

Mr. Mayer suggested that if the deck were removed and the steps came directly from the house they would be allowed in the setback.

Mr. Smith asked Mr. Heyland; if there were no deck under consideration, and there was only a door with steps leading to the ground, would the steps violate the setback?

Mr. Heyland responded that they would and stairways off of decks are part of the setback requirements. He noted that the previous Code Enforcement Officer would allow steps to intrude into the setback however he (Mr. Heyland) does not.

The Board reviewed the six standards of Section 5.2.B.2.a :

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

Mr. Horn noted that the Board has limited information about that part of the property which Mr. Manning suggests is wetlands. If the area is a wetland as confirmed by a soil engineer it might limit the locations where a deck could be placed.

Mr. Smith responded that even if that portion of the property was removed from consideration there may be other potential locations for a deck. He noted that there are adequate areas to the right and left of the house. He asked if there are any considerations which force the applicants to place the deck where they propose and no other location on the property? Even if there were no other locations, is the Board comfortable with the entire fifteen feet (15') being violated?

Mr. Deletetsky suggested that this standard has not been met.

Mr. Smith agreed and added that the topographical considerations are what drive this standard, and the argument that there may be other locations on the property where a deck could be located without violating the setbacks.

**Mr. Deletetsky Moved to find Standard i is NOT MET because the property is not unique.
DELETETSKY/GRISWOLD 5:0 UNANIMOUS**

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

The Board agreed that this standard had been met and that the deck would not effect abutting properties.

**Mr. Horn Moved to Find Standard ii as being MET.
HORN/DELETETSKY 5:0 UNANIMOUS**

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

Mr. Smith reviewed the definition, as found in the Zoning Ordinance, of “practical difficulty”: *“practical difficulty” means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.*”

Mr. Horn suggested that this standard has not been met.

Mr. Smith agreed and noted that the applicants would be creating their own “hardship” by placing the deck in the setback and not somewhere else.

**Mr. Deletetsky Moved to find that Standard iii is NOT MET.
DELETETSKY/GRISWOLD 5:0 UNANIMOUS**

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

Mr. Mayer suggested that without knowing whether there are wetlands on the property the Board cannot state that there are no other feasible alternatives. If it could be proven that the wetlands extend all the way to the side boundary of the house, it might be a “special consideration”.

Mr. DeHart asked if there are setbacks from forested wetlands.

Mr. Heyland responded that there are not.

Mr. Smith noted that there appears to be a viable location adjacent to the existing garage or at the other end of the house, even though these may not be desirable locations for a deck.

Mr. DeHart reminded everyone that the issue of a medical condition was raised.

The Board agreed that in order to consider a portion of the property as “wetlands” they would need a report from a certified soil engineer or the DEP.

**Mr. Horn Moved to Find that Standard iv is NOT MET.
HORN/DELETETSKY 5:0 UNANIMOUS**

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

The Board agreed that a deck would not adversely impact the environment.

**Mr. Mayer Moved to find that Standard v is MET.
MAYER/GRISWOLD 5:0 UNANIMOUS**

vi. *The property is not located in whole or in part within the Shoreland Zone.*

It was agreed that no portion of this property is located in the Shoreland Zone.

**Mr. Smith Moved to Find that Standard vi is MET
SMITH/GRISWOLD 5:0 UNANIMOUS**

**Mr. Horn Moved to Deny the Request for a Variance due to the fact that Standards i, iii, and iv were NOT MET.
HORN/DELETETSKY 5:0 UNANIMOUS.**

Mr. Smith informed Mr. Manning that his Request for a Variance has been denied.

CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland informed the Board that the Planning Board is working on the issue of commercial employee boarding houses in residential zones.

OTHER BUSINESS – None

ADJOURNMENT -

**Mr. Deletetsky Moved to Adjourn at 6:55 p.m.
DELETETSKY/MAYER 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Zoning Board of Appeals
Recording Secretary

Approved on October 9, 2014