



Town of Ogunquit
Zoning Board of Appeals
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**OGUNQUIT ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 1, 2018**

CALL TO ORDER - 4:00 PM

Members Present: Jay Smith - Chair (Term Expires June 30, 2020)
Jerry DeHart –Vice Chair (Term Expires June 30, 2020)
Peter Griswold - Secretary (Term Expires June 30, 2019)
Doug Mayer (Term Expires June 30, 2019)
Mike Horn (Term Expires June 30, 2018)
Carole Aaron – 1st Alternate (Term Expires June 30, 2018)

Members Absent Glenn Deletetsky- 2nd Alternate (Term Expires June 30, 2018)

CALL TO ORDER - 4:00 PM

Mr. Smith noted that a quorum was present and the agenda would be followed as posted.

ACCEPTANCE OF MINUTES – February 1, 2018

Mr. Griswold Moved to Accept the Minutes of the February 1, 2018 Meeting as Amended.

GRISWOLD/DEHART 5:0 UNANIMOUS

UNFINISHED BUSINESS – None

NEW BUSINESS –

- 1. CREDERE PROPERTY SOLUTIONS / KATHLEEN TRAHAN – 7 Dana Road – Map 16 Block 99 – Residential District (R). Variance Appeal Under Article 5.2.B.2.a - Relaxed Dimensional Standards Variance. Request for a 5.2 foot variance on the south side of the proposed structure.**

The Board determined that a quorum was present and that the Board had standing to hear this application.

Mr. Smith asked if there was anyone on the Board who felt he/she had a conflict of interest sufficient to disqualify him/her from hearing this case. There was no one.

Applicant Kathleen Trahan addressed the Board. Ms. Trahan introduced her builder Jeff Morey. Ms. Trahan summarized that she purchased the property in November of 2017 and discovered that the house was in poor condition. The second floor ceiling was too low and her intention was to raise the roof to create livable space on the second floor. At that time she had the property surveyed by Easterly Surveyors and discovered that three sides of the existing house were in violation of the setbacks. She had an architect/structural engineer look at the property and create drawings of possible new structures. She noted that the first option required the pushback of the second floor seven to eight feet to meet current setback requirements which would make the house “not look right for the surrounding neighborhood”. Her second option was to ask this board for a setback to build that side straight up which would still leave three sides of the building in violation of the setback requirements. Her current proposal is to demolish the existing structure; and construct a new house which will correct the setback violations. However this new plan will still have one side of the proposed building where there will be a triangular section of the building within the setback. They need to do this to create a square structure. This proposal will significantly reduce the existing setback violations.

Jeff Morey added that the existing house foundation and the bones of the house are in poor condition and it is in everyone’s best interest to demolish and construct a new house. The proposed new house design will be 90% within the setbacks, everything will be up to code and it will improve the neighborhood.

Ms. Trahan added that the proposed new design will give the abutters additional space between the buildings. She reiterated that without the variance it may be difficult to add a 2nd story to the existing house because of the condition of the foundation and framework.

Mr. Horn asked if the Applicant has compared the volume of the existing house and the volume of the proposed new structure. He asked if there will be an increase in volume if the new house is built.

Ms. Trahan responded that they did not calculate the volume, however there will be additional space added to the second floor of the new house.

Mr. Horn noted that this is a nonconforming structure and the ordinance does not allow for expansion of volume of a nonconforming structure.

The Board confirmed that the existing structure is a nonconforming building on a nonconforming lot.

Mr. Smith noted that the proposal is to make a new structure which is much more conforming. He also confirmed that the ordinance allows for demolition of a nonconforming structure on a nonconforming lot; and a total rebuild of the structure, however there are some requirements which must be met with a rebuild.

Mr. Griswold asked about the pavement between the applicant’s house and the abutter so the southeast. He asked if that was a road or a driveway.

Ms. Trahan responded that it is a driveway which is bisected by the property line. It services both

112 and 7 Dana Road.

Mr. Smith asked if the proposed new structure would have an entirely new foundation and the existing foundation would be completely removed.

Mr. Morey confirmed both.

Mr. DeHart asked if the drawings for the proposed new construction are correct where they indicate that there will be a third story with a dormer.

Mr. Morey responded that they are correct, however the dormer will be at 2 ½ stories. The roofline will be at three stories.

Mr. DeHart asked what part of the third story won't be livable space.

Mr. Morey responded that there will be a staircase going to the third floor however the square footage of the third floor will only be ½ of the second floor.

Mr. DeHart asked, at what time the Applicant discovered the five foot ceiling on the second floor, and the poor condition of the foundation and structure.

Ms. Trahan responded that the property was being sold by the owner, it wasn't listed by a broker. She noticed the for sale sign and did a walkthrough and felt, at that time, that the low ceiling height was an easy fix. She only learned about the poor condition of the foundation later when she had the house inspected by Mr. Morey and the architect. It was in January that she received the Easterly Survey and learned about the setback violations.

Mr. DeHart asked when she found out the house was built in 1925.

Ms. Trahan responded that the previous owner told her it had been in his family forever.

Mr. DeHart noted that the survey prepared by Easterly Survey is referenced by a survey from the abutter on the corner lot. He noted that the previous owner may have known about how close the house sat to the property line. He was surprised the previous owner didn't inform her about the setback issues.

Ms. Trahan responded that the owner is in a nursing home in Florida and the sale of the property was being handled by his nephew and some cousins.

Mr. DeHart asked if there was a right-of-way over the property.

Ms. Trahan responded that there is not.

Mr. DeHart asked if the deck has a roof over it.

Ms. Trahan responded that it isn't really a deck; it is a small platform with stairs – a mudroom. The proposed new structure will be conforming on three sides, there will only be one small nonconformity along the side to make the house a rectangle. She added that the side of the

proposed building with the nonconformity will also be reduced to be more conforming.

Mr. DeHart agreed that the nonconformity on the south side will be reduced; and he asked for the calculations indicating the difference. He suggested that a scale on the plan would be helpful.

Mr. Morey responded that the proposed setback nonconformity is 80 square feet and the existing nonconformity is slightly more.

Mr. Mayer asked about the southwest corner of the house. He asked if the proposed corner would be less nonconforming.

Ms. Trahan agreed that it will be less nonconforming. She added that the house will meet code with regard to height and will not be three stories.

Mr. DeHart noted that the proposed new house will be taller than the existing pre 1930 structure; and the Applicant is asking the Board for a setback variance. She is also wanting to demolish a 1925 structure.

Mr. Smith asked if there were any further questions. There being none the Public Portion was closed at 4:35 p.m.

Mr. Smith summarized that this application involves a nonconforming structure on a nonconforming lot which leads the Board to Article 3 and Article 5 of the Zoning Ordinance. Mr. Smith noted that there are six standards under Article 5.2.B.2.a which must be met. The Applicant is aware of these six standards and she addressed them in her application paperwork.

Mr. Smith noted that the Applicant is asking for a nominal variance to build the new structure which, on three sides will conform to the Town's required setbacks. The side of the proposed home, with the variance will encroach less than the existing house currently does; but won't bring it into exact conformity with the setback.

Mr. Horn noted the change in the volume of the house and referenced Article 3.3.C.2 of the Ordinance which states that: "*Outside of any Shoreland Zone, upward extension of walls or any portions of buildings that increase the building volume that is already in violation of setback requirements shall be considered as a prohibited expansion of a nonconforming structure.*" He pointed out that even though the Board doesn't have the calculations for the change in volume the proposed increase in the height of the structure indicates an increase in volume.

Mr. Mayer agreed that while the proposed footprint of the new building decreases the structure's nonconformity the increase in volume may prohibit the variance.

Mr. Smith suggested that there may not be an upward extension of a preexisting wall. The Applicant is proposing a new structure. The problem is the request to maximize the space in the back corner of the proposed dwelling. Mr. Smith argued that the Applicant is not expanding an existing structure, she is asking to build a new structure, making it nonconforming in the process. He sees this application as a new start with a clean slate.

Mr. Horn disagreed. He sees this application as a comparison between the existing structure and

the proposed new structure; and he asked if the volume should remain the same.

Mr. Smith suggested that no matter what the Board decides the nonconforming lot remains nonconforming; and if the proposal for the new house met all the setbacks the Applicant wouldn't need to come before the Board. However she is asking to construct a new house with a slight incursion into the setback. To the Applicant's credit she has shown that three sides of the proposed structure will meet the setback requirements. This brings the Board to Article 5.2.B.2.a and its six standards which all must be met.

Mr. Mayer asked if the Board has the authority to grant a variance for something that is less, although still, nonconforming.

Mr. Smith responded that, while he wished they could, the Board does not have that authority.

Mr. DeHart disagreed and asked if the Board has ever granted a variance to reduce a nonconformity. He believes the Board has the authority to grant a variance for a very small thing.

Mr. Smith asked if there is any language which allows the Board to approve something that enhances the neighborhood and only contains a minor nonconformity. He wished there was more "wiggle room" for the Board. Mr. Smith noted that the Applicant appealed under Article 5.2.B.2.a which is the standard the Board must review it under.

The Board reviewed the six standards of Article 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. Smith reminded the Board that "property" refers to the geography of the Lot. It refers to things such as wetlands, ledge, and other physical features of the land. He noted that the Board does not generally consider the shape of the lot.

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

The Board came to a consensus that the proposal might actually enhance the neighborhood, and that this standard would be met.

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

The Board agreed that the odd lot line on this property might drive the Board's decision.

Mr. DeHart pointed out that there have been other surveys in this neighborhood which may have effected this property; and he would not say that the cause of the problem is the fault of this applicant but rather a combination of errors over time.

The Board came to a consensus that the difficulty is not the result of any action taken by the

Applicant and that this standard would be met.

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

Mr. Smith asked if there was a “feasible” alternative.

Mr. Mayer suggested that the feasible alternative is to build an irregularly shaped house such as that drawn by the applicant. It may not be as attractive, but it is feasible.

Mr. Horn agreed; and added that the Applicant is building a new house which could be designed to meet the Ordinance.

Mr. Mayer noted that there are irregularly shaped houses in Town which were built the way they were in order to meet the code.

Mr. DeHart suggested that the Applicant is only asking for 35 to 40 feet.

Mr. Horn responded that the amount doesn’t make any difference.

Mr. Horn noted that there is no requirement for the building to be rectangular. The new house could be constructed in another way, even though it may be more difficult for the builder.

Mr. Griswold agreed that there are many irregularly shaped buildings in Town which were built to meet codes.

Mr. DeHart suggested that the Applicant could design the new building to be less wide than she wants; and meet the standards, however it might make it difficult to design the stairway; and it may give it a “tower” appearance.

Mr. Mayer reminded everyone that they are talking about a new structure; not reconstruction of an existing building.

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

The Board came to a consensus that this standard had been met; and that there is nothing in the natural environment of that property that would be adversely affected.

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

The Board came to a consensus that this property is not in the Shoreland Zone.

At this time the Board voted on the standards of Article 5.2.B.2.a with the following results:

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. DeHart noted that the photographs of the property appear to indicate that the north side of

the lot has eroded causing an unreasonable amount of water onto the applicant's property which could cause future damage to the house.

A photograph of the existing house was handed out by a Board member. A point of order was made that the photograph was not submitted via the Board's protocol and the Applicant had not received a copy. The photograph was withdrawn and the Board agreed not to consider it.

Mr. DeHart stated that he is familiar with the property; and even without the photograph his comment regarding erosion stands.

Mr. Smith noted that the topography and drainage issue is on the side of the property where the variance is requested; which might drive the Applicant to move the house away from an area where maximum erosion occurs. Thus the variance may be required in order to avoid locating the house in the area of drainage.

**Mr. DeHart Moved to find that standard i of Article 5.2.B.2.a had been met.
DEHART/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 affect the use or market value of abutting properties.

**Mr. Griswold Moved to find that standard ii of Article 5.2.B.2.a had been met.
GRISWOLD/DEHART 5:0 UNANIMOUS**

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

**Mr. Griswold Moved to find that standard iii of Article 5.2.B.2.a had been met.
GRISWOLD/DEHART 5:0 UNANIMOUS**

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

Mr. Horn stated that the standard had been met.

Mr. Smith asked him to clarify his statement.

Mr. Horn responded that there is a feasible alternative, so it has been met.

Mr. Mayer stated that if Mr. Horn is saying that there is a feasible alternative then the standard has not been met.

Mr. Smith asked Mr. Horn if his motion is that there is no other feasible alternative and that the standard is not met.

Mr. Horn agreed.

Mr. Horn Moved to find that standard iv of Article 5.2.B.2.a had not been met.

HORN/MAYER 4:1 (Mr. DeHart Dissenting)

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

**Mr. Griswold Moved to find that standard vi of Article 5.2.B.2.a had been met.
GRISWOLD/MAYER 5:0 UNANIMOUS**

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

**Mr. Smith Moved to find that standard vi of Article 5.2.B.2.a had been met.
SMITH/DEHART 5:0 UNANIMOUS**

Mr. Smith informed the Applicant that the variance request would be denied due to Standard iv having been found to be not met.

**Mr. DeHart Moved to Deny the Application for CREDERE PROPERTY SOLUTIONS / KATHLEEN TRAHAN – 7 Dana Road – Map 16 Block 99 – Residential District (R). Variance Appeal Under Article 5.2.B.2.a - Relaxed Dimensional Standards Variance. Request for a 5.2 foot variance on the south side of the proposed structure.
DEHART/HORN 5:0 UNANIMOUS**

The Applicant's representative responded that Mr. Horn originally said that there was no feasible alternative and that Standard iv was met; until the other Board members questioned him. It was said and on the record that the Board was voting. It was clear that Standard iv was met.

Mr. Smith responded that Mr. Horn was unclear.

Mr. Horn added that he can change his mind.

The Applicant's representative responded that another Board member coerced Mr. Horn into changing his mind; and Mr. Horn appeared surprised by Mr. Smith's questioning him.

Mr. Smith responded that he did not coerce him.

Mr. Horn responded that it was his (Mr. Horn's) error.

Mr. Smith agreed that the wording of Standard iv is confusing because it is a double negative, however the Board has made its ruling.

At this time the Board took a five minute recess at 5:25 p.m.

2. RAYMOND BENACK – 35 Kings Lane – Map 14 Block 38 – General Business District 2 (GBD2). Variance Appeal Under Article 5.2.B.2.a Relaxed Dimensional Standards Variance. Request for a 6.5 foot variance on the west side of the proposed structure.

Mr. Smith opened the Hearing at 5:30 p.m. thanking the 2nd Applicant for his patience.

Mr. Smith asked if there was anyone on the Board who felt he/she had a conflict of interest sufficient to disqualify him/her from hearing this case.

Mr. Mayer stated that he, jointly with his wife, owns property at 87 Dixons Run Road. He did not feel he had a conflict; however he would leave it up to the Board.

The Board unanimously agreed that Mr. Mayer did not need to recuse himself.

Mr. Smith asked if the Board had standing to hear this case.

Mr. Griswold responded that he did not think the Board had standing to hear this case because the Town has a right of way; and this property in question is about 80% in that right-of-way. He noted footnote #10 on the survey which references an agreement between the Town and the home owner. He noted that the Board has not received a copy of that agreement thus it does not know who signed the agreement; and under what authority the agreement was signed. The house is almost entirely in the right-of-way for a Town road and a private road. Without reviewing that agreement Mr. Griswold did not feel the Board could hear and make a determination of this application.

Mr. Mayer added that the application was denied by the Code Enforcement Officer. He asked if a relaxed variance is the proper way for the Board to hear this case; or should it be heard as an Administrative Appeal.

Mr. Smith responded that this case is the same as the previous case. It is standard procedure for a denied building permit to be appealed to the Board.

Mr. DeHart asked Mr. Griswold if he would be satisfied if the Board were to ask the Applicant what the agreement was about.

Mr. Griswold responded that he felt the Board needs to see the agreement, and understand who signed it and under what authority they signed. He does not remember the Board ever hearing a case for property in a town right-of-way; and if the Town adjusted the property line they should have reduced the right-of-way. He hasn't seen any evidence that the Town has terminated its right-of-way over this property.

Mr. Mayer made reference to footnote #8 as well which indicated that "the edge of the pavement of Old Kings Highway...this description has been used for several conveyances and is the current description of the subject parcel but it is not known how, if any, rights were acquired for this area".

Mr. Griswold asked how the Board can make a determination for this parcel based upon background for which it (the Board) has no information.

Mr. DeHart asked if the Board should do a deed search as part of its task. He (Mr. DeHart) doesn't think that is the Board's responsibility. He noted that the survey is stamped and has a book and page for the deed reference. Mr. DeHart suggested that the Board does have standing to hear this case based upon what it has been given. He noted that the last application's survey had

several references for things the Board did not have. He added that surveys often make reference to things. Mr. DeHart stated that he felt the Board had received enough information to make a decision.

Mr. Griswold asked Mr. DeHart how he can feel comfortable making a decision regarding a lot which is on Town property

Mr. DeHart stated that the property is there and isn't going anywhere and the variance is for a part of the property which is not located on Town property.

Ms. Aaron noted that her packet didn't include a photograph.

Mr. Smith responded that there were no photographs. Regarding jurisdiction, Mr. Smith noted that the Applicant isn't asking for anything in the right-of-way.

Mr. Mayer suggested this may not be true. He pointed out a dashed line on the survey which may indicate a portion of the property may be in the right-of-way.

Mr. Horn stated that the Board is talking about the buildings not the lot.

Mr. Griswold reiterated that if an agreement had been made, the right-of-way should have been changed because you can't have a right-of-way go through a house. This house is in the middle of a road.

Mr. Horn responded that this involves a right-of-way, not a road; and it isn't within the Board's jurisdiction to worry about the basis of the property.

Mr. DeHart added that it is clear that the Applicant has right, title, and interest in the subject property.

Mr. Mayer agreed and added that it seems as if at one time the road may have been wider; and because of the improvements to Route One the road width has decreased.

Mr. DeHart added that there are several houses on Route One which are on the state right-of-way.

Mr. Smith asked the Code Enforcement Officer if he knows about the referenced agreement.

Mr. Heyland responded that in May of 2014 the Select Board entered into an agreement with Mr. Benack whereby the Town acknowledged that there was a portion of the building which was on Town property. It is his interpretation that the Town was satisfied; and an agreement was drafted to acknowledge that the building was there. The issue has been looked at in the recent past.

Mr. Griswold asked if anyone took the next step to reduce the right-of-way.

Mr. Heyland responded that when there is a building whose footprint encroaches onto a right-of-way, the new limits of the right-of-way follow that footprint. The old 66' width is from previous survey work and may not be relevant.

Mr. Griswold asked to table the application until the Board gets clarification.

Mr. Smith asked if lack of having a copy of the agreement impacts the Board's ability to hear the case, given that the portion of the property involving the requested variance isn't in the right-of-way.

Mr. DeHart asked where it says that the Board needs to have more than proof of right, title, and interest; which this applicant has provided.

Mr. Smith suggested the Board hear the case and decide if it needs additional information.

Mr. Griswold again reiterated that there should be something which says that the right-of-way has been altered.

Mr. DeHart suggested that this is something the Code Enforcement Officer may have to look into.

Mr. Smith noted that if the applicant was moving something into a right-of-way it would be important for the Board to consider that.

Mr. DeHart interpreted the plan differently. He did not believe that the proposed project is located in the right-of-way.

Mr. Smith stated that the portion of the building to be altered is not on that portion of the property which is in the right-of-way, thus the question is not relevant. The Town has acknowledged that a portion of the Applicant's property is in a right-of-way however the proposed work will not be in that portion of the property. He asked the Board members if they felt the Board could hear the case; and if they hear anything that brings this issue to the forefront they can defer the case.

**Mr. DeHart Moved to confirm that the Board has jurisdiction to hear this case.
DEHART/MAYER 4:1 (Mr. Griswold did not raise his hand).**

Attorney Matt Howell addressed the Board on the Applicant's behalf. He informed the Board that Mr. Benack purchased the property in 2006 and had it surveyed four years later. The deed referenced the property going up to Old Kings Highway and noted that it was referencing the old right-of-way; not the current Route One. As a result there was an error when the building was constructed in the 1950s. This was not discovered until 2010 when Easterly Survey did the survey. Thereafter there were discussions with the Town; and there is some statutory precedent, Title 23 Section 295 to address a person, or an entity, taking by adverse possession, a municipalities land. The Statute allows the Town to enter into an agreement with a land owner so that the land owner may continue to own the built upon area. The agreement in question was drafted by the Town Attorney, reviewed, voted upon, and approved by the Select Board, and signed by Mr. Benack and Town Manager Thomas Fortier on July 18, 2014. Attorney Howell offered copies of the agreement to the Board. The agreement does say "this provision shall not limit or impair the owner's ability to repair, improve, or place such buildings or improvements".

Attorney Howell provided copies of the agreement to the Board Chairman.

Attorney Howell suggested to the Board that it has the authority to allow a nonconformity which

reduces an existing nonconformity. He referred to Section 1.4.A.2 of the Ogunquit Zoning Ordinance which addresses that question; and states that a nonconformity may be allowed if a variance is granted by the Board of Appeals.

Kristi Kenney from KW Architects addressed the Board and summarized the proposed project. Ms. Kenney informed the Board that the Applicant has Parkinson's Disease and his condition will progressively get worse. The current structure is a two story building with a kitchen on the second level accessible via an inside spiral staircase. The ideal living situation for the Applicant is single floor living. The proposed project is to demolish an existing single story guest cottage, and construct a new addition of the exact same square footage adjacent to the Applicant's existing home on the same lot. There will be no increase in square footage of the living space on the property.

The existing second level of the home will become the new guest apartment. The existing nonconformity will be decreased by moving the guest cottage away from the setbacks; and there will be no increase in the square footage or volume of the living space on the property.

Ms. Kenney confirmed that the existing guest cottage will be removed and the addition will be a new structure constructed onto the existing house.

Mr. Benack agreed that the existing cottage would be removed and an addition, of the exact same square footage, will be constructed onto the main house. This addition will be a kitchen so that he will have first floor living space. What is now his kitchen, on the second floor, will become the new guest living space.

Mr. DeHart asked Attorney Howell to review his reference to Section 1.4 and how it relates to this case.

Attorney Howell noted that, during the last case reviewed, the Board questioned whether or not it had the ability to approve something which does not completely conform to the Ordinance. He went on to say that

Section 1.4 – Conformity - of the Zoning Ordinance states that:

- A. No building or structure shall be erected, altered, enlarged, rebuilt, moved or used, and no land shall be used, and no new lot shall be created, unless in conformity with the provisions of this Ordinance, except:*
 - 1. those existing at the time of adoption of this Ordinance, which by the provisions of this Ordinance become legally nonconforming, or*
 - 2. unless a variance is granted by the Board of Appeals.*

This language opens the door for the Board to approve a nonconformity if it meets the criteria in the variance section.

Mr. Mayer noted that the previous case involved construction of a new structure. This case involves an addition to an existing nonconforming structure.

Mr. Horn asked if the Applicant was asking for a disability variance and if so, can he substantiate

the disability.

Mr. Smith responded that this is not a disability variance request, thus the Board won't ask the Applicant for medical information.

Mr. Mayer asked why there is no existing kitchen on the first floor of the main house.

Mr. Benack responded that he believes the building was originally a garage with living quarters on the 2nd floor where there is a bathroom, kitchen, and two rooms. At some point someone converted the garage space into living room/bedroom space and continued to use the 2nd floor kitchen.

Ms. Kenney added that the Applicant declined to appeal for a variance on disability basis because of the requirement that the changes be removed when the disability is no longer a factor. That will not be possible with the proposed plan.

Mr. Smith agreed and confirmed that the Board would not ask for medical information from the Applicant.

Ms. Aaron asked why the original building permit was denied.

Ms. Kenney responded that in order to get the Zoning Board, the Applicant's Building Permit Application had to be denied. She pointed out the designated "only buildable area on the lot" as outlined on the survey. The Building Permit Application had to be denied because there was no other alternative to where the Applicant could build on that lot.

Mr. Mayer noted that Dixons Run Road has a 33' right-of-way shown on the survey. He asked if there is existing fencing around this property.

Ms. Kenney responded that there is.

Mr. Benack added that the fence was there when he purchased the property; and he added to it.

Mr. DeHart added that the survey indicates a small portion of the fence being on the neighbor's property.

Mr. Benack responded that it was originally a stone wall and the fence is on his land. His neighbor agreed that their land begins where the fence ends.

Mr. Mayer asked if the fence was in the right-of-way.

Mr. Benack responded that the neighbor's fence has been there for over thirty years. The right-of-way has utilities on it including telephone and electric poles.

Attorney Howell stated that there are no encroachments on the travel way as noted in the notes on the survey. In 2009/2010 York County Superior Court Justice Fritzsche ruled that when there is a granted right-of-way, which includes a smaller "travel way" the people who have the access to travel over that land to access their land may utilize the entire width of the granted right-of-way.

This only becomes germane if one of those people demands to alter / pave the right-of-way. This would be a civil matter between Mr. Benack and whoever raised the issue.

Mr. Mayer asked how the 33' right-of-way applies to this property.

Attorney Howell responded that it does apply to property owners on Dixons Run Road; however it does not apply or effect this application.

Mr. Griswold asked for the distance between the northwest line and the edge of the new structure.

Ms. Kenney responded that it is roughly 4' to 5'; and the cottage which is to be removed was 1.5 feet from the property line. The proposed structure will be 8'6" from the property line.

Mr. Smith noted that the project involves no change in square footage, no change in volume, and a reduction of the nonconformity with an alteration of the existing house, not the construction of an entirely new building.

The Public Portion of the Meeting was closed at 6:37 p.m.

Mr. Smith summarized that this application involves a nonconforming lot and a nonconforming building; and a request to demolish and relocate a structure. This will reduce the existing nonconformity. The Applicant is asking for a 6.5 foot variance which will lessen the nonconformity.

At this time the Board reviewed the Standards of Article 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. DeHart suggested that the existing right-of-way is unique to the property and as such this standard has been met.

- 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 change will be more attractive and will reduce the nonconformity and as such this standard would be met.

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

Mr. DeHart suggested that the Applicant's disability is only one factor of the application and isn't the basis for this application.

Mr. DeHart suggested that if the Town has given relief to the right-of-way regarding the footprint of the structure it relieved the owner of responsibility, and that relief extends to the Applicant. Thus the agreement between the Town and the Applicant relieves him of

responsibility.

Mr. Horn noted that the agreement states that it would not limit the owner's ability to improve the structure.

The Board agreed by consensus that this standard would be met.

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

Mr. DeHart suggested that because of the nature of this property there is no other feasible alternative. This project involves a clear improvement for the Town and all of the Applicant's neighbors.

Mr. Mayer agreed that the buildable area of the lot will be less nonconforming than what currently exists.

Mr. DeHart added that unlike the earlier case there is no structure which will become closer to an abutter. This proposed project moves an existing nonconformity further away from the abutter.

Mr. Griswold pointed out that they are building new and it would not be feasible to build within the conforming buildable area.

The Board agreed by consensus that this standard would be met.

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

The Board agreed by consensus that this standard would be met.

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

The Board agreed by consensus that this property is not in the Shoreland Zone; and this standard would be met.

At this time the Board voted on the standards of Article 5.2.B.2.a, all of which must be met for the granting of a variance, with the following results:

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. Griswold Moved to find that standard i of Article 5.2.B.2.a had been met.
GRISWOLD/DEHART 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.

Mr. Griswold Moved to find that standard ii of Article 5.2.B.2.a had been met.

GRISWOLD/MAYER 5:0 UNANIMOUS

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

**Mr. Griswold Moved to find that standard iii of Article 5.2.B.2.a had been met.
GRISWOLD/DEHART 5:0 UNANIMOUS**

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

**Mr. DeHart Moved to find that standard iv of Article 5.2.B.2.a had been met.
DEHART/MAYER 5:0 UNANIMOUS**

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

**Mr. DeHart Moved to find that standard v of Article 5.2.B.2.a had been met.
DEHART/SMITH 5:0 UNANIMOUS**

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

**Mr. DeHart Moved to find that standard v of Article 5.2.B.2.a had been met.
DEHART/SMITH 5:0 UNANIMOUS**

**Mr. DeHart Moved to Grant a Variance per the submitted plan and the minutes of this meeting.
DEHART/HORN 5:0 UNANIMOUS**

CODE ENFORCEMENT OFFICER BUSINESS – None

OTHER BUSINESS –

Mr. Smith reminded everyone that the Board would be meeting with the Select Board and each Board member would have the opportunity to speak with the Select Board and respond to questions.

ADJOURNMENT –

**Mr. DeHart Moved to Adjourn at 7:20 p.m.
DEHART/MAYER 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy
Recording Secretary

Approved on March 22, 2018