



Zoning Board of Appeals  
Post Office Box 875  
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**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
MAY 2, 2019**

**CALL TO ORDER - 4:00 PM**

Members Present: Jay Smith, Chair (Term Expires 2020)  
Jerry DeHart, Vice Chair (Term Expires 2020)  
Peter Griswold, Secretary (Term Expires 2019) Arrived at 4:20 p.m.  
Doug Mayer (Term Expires 2019)  
Carole Aaron\* (Term Expires 2019)

Excused Absence: Mike Horn (Term Expires 2021)

Unexcused Absence: Glen Deletetsky\*\* (Term Expires 2019)  
\* 1<sup>st</sup> Alternate \*\* 2<sup>nd</sup> Alternate

Also Present: Scott Heyland, Ogunquit Code Enforcement Officer

Mr. Smith noted that a quorum was present; and the Board would follow the agenda as posted.

Mr. Smith noted that due to Mr. Horn’s absence Ms. Aaron would be a full voting member for the duration of this meeting.

**ACCEPTANCE OF MINUTES – April 4, 2019**

**Mr. DeHart Moved to Accept the Minutes of the April 4, 2019 Meeting as Amended.  
DEHART/AARON 4:0 (Mr. Griswold had not yet arrived at the Meeting)**

**OLD BUSINESS – None**

**NEW BUSINESS –**

- LAFAYETTE OGUNQUIT LLC – 135 Beach Street – SG1 – Map 7 Block 87-89. Variance Request to exceed building coverage restrictions for a legally non-conforming site with the construction of an elevator to accommodate persons with disabilities.**

Mr. Smith asked if there was any Board Member who had a conflict of interest sufficient to disqualify him/her from hearing this case in an impartial manner. There was no one.

Mr. Smith Confirmed that there was a quorum; and that the Board had standing to hear this case.

Attorney John Bannon addressed the Board on behalf of the Applicants. Mr. Bannon agreed that this application may move the Board in a direction it has not previously reviewed. This application is not governed by ordinance but rather by Federal Law, specifically the Americans With Disabilities Act (ADA).

The Applicant is requesting a variance to increase, by .3%, in the grandfathered building coverage on the Norseman lot for the construction of an elevator tower with a 200 square footprint. The sole purpose of this request is to allow handicapped persons the ability to access the Norseman facilities on the same basis as persons who are not handicapped.

The basis for the request is not any of the variance types discussed in Section 5.2.D of the Zoning Ordinance. It emanates from the ADA which is a law which is not always very well understood.

Case Law has granted municipalities the ability to grant a person on behalf of handicapped people a reasonable accommodation from the Zoning Ordinance that will allow them equal access to public, in the general sense, facilities.

The basis for the jurisdiction comes from the ADA which states in part: “no qualified individual with a disability shall by reason of such disability be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity; or be subjected to discrimination by any such entity”.

Mr. Bannon stated that “discrimination” does not mean ill will or a desire to treat handicapped people unfavorably. It is not a question of the Town having the intention to harm handicapped people. Discrimination is an affect, not an intent. If the result of a governmental entity’s actions has the result of discriminating against handicapped people; it puts them in a situation which is unequal to that of non-handicapped people it is considered to be discrimination.

It is Mr. Bannon’s contention that in this case the Ordinance Regulations draw a line which places handicapped people on one side; and non-handicapped people on the other.

The last phrase in the ADA Law is “...be denied the benefits of, the services programs or activities of a public entity;...”. The Courts have ruled that the word “activities” includes zoning; and the enactment and administration of a zoning ordinance which permits discrimination.

If a zoning regulation causes handicapped people to be put at a disadvantage; and there is a means the municipality or the ZBA may take to provide a reasonable accommodation under the Ordinance which will remove that discrimination; the municipality and its boards have an obligation to grant that accommodation. Mr. Bannon also explained that the standard of inconvenience to the public entity is very high. Unless the proposed accommodation causes substantial interference with governmental processes it is considered to be reasonable.

In this case, the town has an ordinance which prevents the Norseman from constructing an elevator which has a sole purpose of providing handicapped persons access to the second floor accommodations. The question for this Board, from an ADA standpoint, is would allowing the

Norseman to construct the elevator be a reasonable accommodation to handicapped persons; and if the Board were to allow that to occur would it cause the types of disruptions that would excuse the municipality from acting.

In summary, Mr. Bannon reiterated that this Board's jurisdiction comes from Federal Law which supersedes State and Municipal Laws with regard to granting reasonable accommodations for handicapped individuals.

Mr. Bannon asked the Board to grant the requested variance based upon the obligations of the ADA to make reasonable accommodations for the handicapped; and for the construction of an elevator and to send this case to the Planning Board for Site Plan and Design Review.

Mr. Mayer asked for confirmation that the variance is for an increase of .3% .

Mr. Bannon responded that the intention is for an increase of .3.%.

Mr. Mayer questioned Mr. Bannon's statement that the elevator's "sole purpose is for handicapped accessibility to the second floor". He asked if the elevator would be used by non-handicapped people.

Mr. Bannon responded that there is nothing in the ADA which requires a facility to exclude non-handicapped people from using devices intended to support handicapped people.

Mr. Griswold asked if the elevator will go only to the second floor.

Geoff Aleva responded that the elevator will service two buildings with two stops at each building; however it will only go as high as the second floor. Access to the elevator will be via the parking area without a step.

Mr. Aleva stated that there will be no increase in "lot coverage" because the elevator will replace parking area and deck area. However there will be an increase in "building coverage".

Mr. DeHart asked if the removal of the existing ramp and stairs were counted toward the .3%.

Mr. Aleva responded that they were.

Mr. DeHart noted that a resident had asked about the use of a vegetable based vs. petroleum based hydraulic oil.

Mr. Aleva responded that they will do the same thing they did with the Huckleberry's building elevator. They will use DEP approved vegetable oil based hydraulic. In the event there is ever a leak it will be a biodegradable product.

Ms. Aaron asked if the property would lose any handicapped parking spaces. Mr. Aleva responded that they will not.

Mr. Griswold asked if any of the Norseman rooms were more than 650 square feet.

Mr. Aleva responded that they are smaller.

Mr. Smith asked if the resort amenities are the same on the first and second floors.

Katie Kelly responded that the amenities are the same however the experience on the second floor is different where the view is better and the noise level is less. They do not charge a different rate for first and second floor rooms because they won't treat anyone differently.

Mr. Smith asked what benefit is denied a person by not having access to the second floor.

Ms. Kelly responded that the second floor rooms are more private, quieter, and they have a better view. In addition many guests have been coming for years and always stayed on the second floor; and now that they are older they are not able to access the second floor and their experience changes because they are no longer able to stay in "their usual room".

Mr. Mayer asked if there is the potential for the loss of any parking spaces.

Mr. Aleva responded that there is the potential for the loss of one parking space.

Mr. DeHart stressed that for a very small .3% variance the Board has the ability to allow handicapped persons the ability to get to the second floor. He stated that if he were to stay at that hotel he would want to stay on the second floor.

Mr. DeHart stated that ADA is important and Ogunquit is behind the times and this type of situation will be coming up more and more; and for such a small percentage of coverage increase this Board needs to grant the request.

Mr. Griswold asked if the elevator couldn't be constructed within the existing building with the sacrificing of one or two guest rooms. He asked if the applicant has an alternative.

Mr. Smith reminded the Board that they are not dealing with the five standards they would normally use for a variance. This application is outside the boundary of the Code and the Board may be breaking new grounds. They are going to a different level of review, i.e. the ADA which is Federal Law which prohibits discrimination on the basis of disability.

Mr. Smith went on to say that the ADA states that hotels must comply with ADA to prohibit unequal treatment. Preexisting hotels must make reasonable accommodation to meet access needs; and this Board will need to determine whether this proposed project is "reasonable".

Mr. Smith noted that the fact that a person in a wheelchair cannot even gain access to the first floor of this hotel changes the manner in which he looks at this case. With the proposed elevator they would have access to both floors; and the fact that handicapped people can't get to where they should be able to go is the compelling argument in his mind.

Mr. DeHart reiterated that the Courts have determined that handicapped people have the right to have access to everywhere. The ADA Argument will come before the board more and more and the Town needs to respond.

Mr. Mayer questioned whether there was any feasible alternative; and if that is one of the criteria the Board is looking at.

Mr. Smith responded again that the Board is not looking at the normal five standards under Article 5.2.B.2.b. This Applicant has introduced an outside / overriding authority, namely the ADA Federal Regulations.

Mr. DeHart Moved to Grant a .3% Variance for the installation of the proposed elevator.  
DEHART/AARON

Mr. Heyland explained that with a variance in hand the applicant may go to the Planning Board for Site Plan and possibly Design Review.

Mr. Mayer asked if the Planning Board will ask if there is any other feasible alternative.

It was determined that the Planning Board is a separate and independent Board and the Zoning Board will not tell them what to consider.

Mr. Smith called for a rereading of Mr. DeHart's motion; and a vote:

**Mr. DeHart Moved to Grant a .3% Variance for the installation of the proposed elevator.  
DEHART/AARON 4:1 (Mr. Mayer Dissenting)**

**CODE ENFORCEMENT OFFICER BUSINESS –**

**OTHER BUSINESS –**

- 1. Review proposed amendments to Ogunquit Zoning Board of Appeals By-Laws (last adopted on February 1, 2018)**

**Mr. Smith Moved to Accept the Amended Ogunquit Zoning Board of Appeals By-Laws.  
SMITH/AARON 5:0 UNANIMOUS**

**ADJOURNMENT -**

**Mr. DeHart Moved to Adjourn at 5:54 p.m.  
DEHART/AARON 5:0 UNANIMOUS**

Respectfully Submitted  
*Maryann Stacy*  
Maryann Stacy  
Recording Secretary

*Approved on June 13, 2019*