



Zoning Board of Appeals  
Post Office Box 875  
Ogunquit, Maine 03907-0875

**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
JUNE 13, 2019**

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

Members Present:	Jay Smith, Chair	(Term Expires 2020)
	Jerry DeHart, Vice Chair	(Term Expires 2020)
	Mike Horn	(Term Expires 2021)
	Peter Griswold, Secretary	(Term Expires 2022)
	Doug Mayer	(Term Expires 2022)
	Carole Aaron*	(Term Expires 2020)
	Glen Deletetsky**	(Term Expires 2020)

\* 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.

**ACCEPTANCE OF MINUTES** – May 2, 2019

**Mr. Griswold Moved to Accept the Minutes of the May 2, 2019 Meeting as Amended.  
GRISWOLD/DEHART 5:0 UNANIMOUS**

**OLD BUSINESS** – None

**NEW BUSINESS** –

- MISTER T, LLC – 387 Main Street – GBD2 – Tax Map 14 Block 13. Variance Request under Article 5.2.B.2.a. Relaxed Dimensional Standard Variance. Applicant is seeking a setback variance to construct a new structure**

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 that the Board had standing to hear this case.

Linda Briggs, the Applicant and owner of Mister T LLC, addressed the Board. She has a Purchase and Sale Agreement to purchase the property at 387 Main Street which was used as a

gas station. She proposes the construction of a small real estate office.

Ms. Briggs summarized that she proposes the construction of a two story, 1200 square foot real estate office, with five parking spaces (including one handicapped parking space). The subject parcel is a corner, triangular shaped lot, with an irregularly shaped conforming building envelope. The five proposed parking spaces would meet setback requirements; however the proposed new structure would require variances from the two street frontages (US Route One and Glen Avenue). The new structure would be located within the footprint of the existing gas station, including the existing canopy.

Mr. Griswold asked if Ms. Briggs intended to keep her current office location on Beach Street when she opens this new office on Route One.

Ms. Briggs responded that she does not. She will purchase the Route One property and give up her rented space on Beach Street.

Mr. Griswold noted that it is the combination of the proposed new structure with the required parking spaces that pose the setback problem.

Mr. Horn asked how much of a setback Ms. Briggs is asking for.

Ms. Briggs responded that she is asking for 20.1 feet from the northeast property line and 21.4 feet from the southeast property line.

Ms. Briggs explained that she will remove most of the existing concrete and replace it with vegetation, thus decreasing the impervious surface and improving the aesthetic look of the property and neighborhood.

Mr. Mayer noted that the existing structure is non-conforming and he asked if the proposed new structure would increase the non-conformity.

Ms. Briggs responded that it would not. The proposed structure would occupy the existing building's footprint plus the existing canopy.

Mr. Heyland added that the awning/canopy is not a "building". The existing gas station attendant booth is considered to be a "building". The awning/canopy is not; and thus may not be used for replacement square footage. He added that the parking space count is determined by the square footage of the proposed structure; and the parking stalls must be outside of the setbacks.

Mr. Mayer noted that the proposed new structure would be able to meet setbacks; it is the proposed parking spaces which intrude into the setbacks.

Ms. Briggs pointed out that the existing surface conditions are 100% impervious. The proposed changes will significantly increase the impervious surface; and beautify the parcel and neighborhood.

Mr. Horn responded that, while that is desirable, it is not relevant to these proceedings.

Mr. Deletetsky asked where the entrance driveway would be located.

Ms. Briggs responded that it has to be off of Glen Avenue.

Mr. Smith asked if Ms. Briggs had any further comments. She did not and the public portion of the Hearing was closed at 4:32 p.m.

Mr. Horn summarized that this property is located outside of the Shoreland Zone; and it is a nonconforming lot which does not meet the minimum lot area requirements. The Real Estate Office use is a permitted use in this district.

Mr. Smith noted that this is a “built lot” with a nonconforming structure on it. The Ordinance, in Section 3.4, allows for the reconstruction of the structure however the new structure must conform to all height and setback requirements and other dimensional requirements. If the Applicant cannot meet all the requirements in Section 3.4. she may request a variance under Article 5.2 which she has done.

Mr. Smith pointed out that the Applicant has asked for a significant setback variance of approximately 20 feet from Route One.

Mr. Smith reminded the Board members that, in order for the Board to grant a Variance, the Applicant must meet all six criteria outlined in Article 5.2.B.2.a of the Zoning Ordinance.

Mr. Horn noted that a variance of over twenty feet is exceptional; and the Board hasn’t heard a request for such a large variance before.

Mr. Mayer pointed out the large amount of existing impervious surface on this parcel; and he asked if the nonconformity would be increased with the construction of the new building.

Mr. Horn responded that the Applicant has proposed a post construction reduction in the impervious surface. Mr. Horn also confirmed that the gas station underground tanks were removed; and the gas station use will soon be classified as an “abandoned use”. He also confirmed that this was the last gas station in Ogunquit; and Ogunquit has categorized gas stations as a prohibited use in Town.

At this time the Board reviewed the six standards of Article 5.2.

- 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 asked what the Town Attorney has said about the definition of “unique circumstances of the property”.

Mr. Smith responded that he has been told by Maine Municipal Association Attorneys, and other legal authorities, that the unique circumstances of the property refers to the land; something unique to the land and not the structures on it. The uniqueness refers to topographical conditions of the land such as ledge, swamps, or other physical characteristic of the land. It also may refer to things such as right-of-ways or historic structures or other legal impediments to the use of the

property.

The Board agreed that this standard would probably be met due to the unique shape of this property.

- 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 agreed that this standard would probably be met due to the unique shape of this property.

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

Mr. Smith reminded the Board that the Ordinance notes the “practical difficulty” as the strict application of the Ordinance to the property which precludes the ability of the petitioner to pursue a use permitted in the district in which the property is located; and results in significant economic injury to the petitioner.

Mr. Smith noted that the Applicant/Petitioner does not own this property yet. She has a contract to purchase the property, however it still is owned by Gibbs Oil.

Mr. Griswold noted that the Applicant has submitted a letter from Gibbs Oil authorizing her to appear before the Board with this application.

Mr. Horn suggested that the gas station use was abandoned by Gibbs Oil when they removed the fuel tanks; and no other company has come forward to reestablish the use as a gas station on that property. Mr. Horn reiterated that the Town no longer allows gas stations in Ogunquit.

Mr. Smith asked if the Applicant can claim significant economic injury to herself without the variance. He noted that she already has an existing business location in town; although she rents that location and desires to own this location.

Mr. DeHart suggested that Gibbs Oil could claim significant economic injury if the property was unable to be sold due to an inability to build on it. He added that while it is a uniquely shaped parcel something could be built on it that meets the setbacks.

The Board agreed that this standard may, or may not, be met.

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

Mr. Mayer suggested the structure could be built to meet the setbacks; then the only problem would be with the parking.

Mr. Deletetsky added that a single parking space could be accommodated.

Mr. Smith added that a smaller structure on the property, with a use that requires less parking,

could meet this standard. He also noted that a single story, trapezoidal structure, on a smaller footprint, that only requires three parking spaces would meet the dimensional requirements. A 1200 square foot structure with three parking spaces could fit within the building envelope.

Mr. Horn responded that this petitioner has specific needs; but the ordinance language refers to “the petitioner”.

Mr. DeHart added that a petitioner could ask for a variance from the parking requirements if the structure were to fit within the setback envelope. He agreed with Ms. Briggs that the property, in its current condition, is an eyesore and her proposal will be much more attractive and a benefit to the aesthetics in the Town. However other applicants have come before the Board requesting smaller variances which were denied; and to grant this application because it would be nicer for the Town to have a beautified property, would not be fair. It’s difficult; and the Board is required to abide by the six criteria in the Ordinance.

Ms. Aaron asked if the parking could be rearranged to meet the setbacks.

The Board agreed that this standard probably can’t be met.

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

The Board agreed that this standard would probably be met.

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

The Board agreed that this standard would be met.

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

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

The Board voted 4:1 that this standard had been met (Mr. Smith Dissenting).

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

The Board voted 5:0 that this standard had been met.

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

The Board voted 4:1 that this standard had been met (Mr. Smith Dissenting).

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

At 5:05 p.m. Mr. Smith reopened the Public Portion of the Hearing so that Mr. Horn could ask the applicant a question.

Mr. Horn asked Ms. Briggs if she would consider reducing the size of the proposed structure.

Ms. Briggs responded that the land can't yield a reasonable return without the variance. The irregularity of the parcel predicates a commercial use of the property and limits the size of any structure which will be built upon it. She added that the Town needs to have this property developed in a new and attractive manner.

At 5:07 p.m. Mr. Smith closed the Public Portion of the Hearing.

Ms. Aaron reiterated that this specific petitioner needs a real estate office; and she asked how Ms. Briggs could operate her business on this property with less building than she has proposed.

Mr. Mayer suggested a two story building could be constructed at the southernmost end of the property; and with a variance for parking spaces, or less parking spaces, she could go forward with her plan.

Mr. DeHart suggested that the use of the term "petitioner" may not specifically refer to this petitioner; it may refer to any petitioner.

Mr. Griswold asked if the setback requirements might be altered if only applied to Route One. He asked if Glen Avenue might not be considered to be frontage. He noted that Glen Avenue is a secondary road and might be more of a neighborhood road; different from Route One. Would the town entertain reclassifying Glen Avenue so that the front setback might not apply?

Mr. Smith reiterated that he is uncomfortable with the size of the requested variance. He also pointed out that according to the current Zoning Ordinance this property has two frontages: Glen Avenue and Route One and the Board has to act accordingly.

Mr. Griswold Moved to find this standard to be met.

Mr. Smith noted that the motion failed for lack of a 2<sup>nd</sup>.

**Mr. Horn moved to find that this standard had not been met.  
HORN/SMITH 4:1 (Mr. Griswold dissenting).**

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

The Board voted 5:0 that this standard had been met.

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

The Board voted 5:0 that this standard had been met.

**Mr. Horn Moved to Deny the Variance Request for MISTER T, LLC – 387 Main Street – GBD2 – Tax Map 14 Block 13 due to Standard iv not being met by the Applicant.  
HORN/MAYER 5:0 UNANIMOUS**

**CODE ENFORCEMENT OFFICER BUSINESS** – None

**OTHER BUSINESS** –

Mr. Smith informed the Board that Article 5 and 6 were amended at the last Town Meeting. They affect this Board and he suggested the Board members review the amended Articles.

**ADJOURNMENT** –

**Mr. Horn Moved to Adjourn at 5:35 p.m.  
HORN/DEHART 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy  
Recording Secretary

*Minutes Accepted on December 12, 2019*