

OGUNQUIT ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 3, 2010

A. CALL TO ORDER - 7:00 PM

Mr. Duell called the Roll with the following results:

Members present: Jay Smith – Chairperson
 Michael Horn – Vice Chairperson
 Larry Duell – Secretary
 Glenn Deletetsky
 Anthony Mauro – 1st Alternate
 Robert Hanson - 2nd Alternate

Members Excused: Roy Wooldridge

Also present: Paul Lempicki, Code Enforcement Officer

Mr. Smith noted that in the absence of Mr. Wooldridge Mr. Mauro would be a full voting member for this meeting.

Mr. Smith noted that a quorum was present.

B. ACCEPTANCE OF MINUTES - March 11, 2010

Mr. Horn Moved to Accept the Minutes of the March 11, 2010 Meeting as Submitted.
HORN / MAURNO 5/0 UNANIMOUS

C. UNFINISHED BUSINESS -

Mr. Horn noted that the Board is due to elect a new Vice Chair.

Mr. Smith recommended elections be held at the end of the meeting under "Other Business".

D. NEW BUSINESS –

1. a) LEONARD PEZZANO AND ROGER PRESLEY – Sea Oaks Lane (Map 3 Lot 11). Administrative Appeal Under Article 5.2.A. Appeal of the Code Enforcement Officer's decision to deny a building permit for the above noted parcel.

b) Variance Appeal to allow the building envelope for Map 3 Lot 11 to consist of 20% of the entire lot.

Mr. Smith asked if any member of the Board had a conflict of interest sufficient to disqualify him from hearing and voting on this case. There were no conflicts. Mr. Smith then asked if the Board had jurisdiction / standing to hear this case.

Mr. Lempicki voiced his objection to the Board hearing this case. Mr. Lempicki noted that this appeal was previously heard in September 2008 and was denied by the Board. He did not believe that this case has standing.

Mr. Smith confirmed that this case was previously heard in 2008. He asked for confirmation that applicants have the ability to bring a case back to the Board after a one year waiting period.

Mr. Lempicki responded that they do if there are circumstances, or changes, that warrant it.

Mr. Smith responded that this applicant is not asking for reconsideration, they are asking to have the case heard again. It was his (Mr. Smith's) understanding that reconsideration was the only exclusion to the "one year rule".

Mr. Lempicki disagreed.

Mr. Duell noted that the last time this case was heard it was not an Administrative Appeal. This present case is an Administrative Appeal combined with a Variance Request.

Mr. Smith noted that this case is both an Administrative Appeal and a Variance Request combined, which is somewhat unique, he asked if it was the Board's wish to hear this case.

Mr. Horn agreed with Mr. Lempicki that this is basically the same case the Board heard last time. However he noted that the Board is only going to have to look at one section of the case this time. He would not want the Board to have to go back and review a decision it has already made.

Mr. Smith acknowledged that the Board has the background information on this case, the only thing that has changed since the 2008 decision is the upgrading of the Zoning Ordinance language, specifically the Shoreland Zoning. Mr. Smith noted that this may not effect this particular case, however there has been an ordinance change. He referred to the Southern Maine Regional Planning Commission's (SMRPC) 22 September 2008 Memo of clarification, and confirmation of the Board's 2008 Decision.

Mr. Smith confirmed for the audience, and the applicant, that the Board has already heard this case in 2008 however the Board is not predisposed to any decision, however the Applicant must understand that the Board members have already heard the facts of the case and are intimately familiar with the case.

Mr. Maurno pointed out that the denial and the Notice of Decision dated September 4, 2008 were based on the Variance Request, not an Administrative Appeal.

Mr. Horn Moved to not hear this case based on the Board's 2008 Decision which involved identical circumstances.

HORN/DELETETSKY

Mr. Smith called for discussion.

Mr. Horn agreed with Mr. Smith that the only change between 2008 and now is the new Shoreland Zoning requirements which are even more restrictive than they were when the case

was originally heard in 2008. Mr. Horn referred back to the 22 September 2008 SMRPC Memo which supported the Board's 2008 Decision.

Mr. Smith agreed that the outcome of this case, based upon the documentation which the applicant has provided, is insufficient to overturn the Board's 2008 Decision. He noted that the Board has not yet heard the Applicant's presentation, however after looking at the rules as well as Justice Brennan's 2000 Decision (Kevin Grimes v. Town of Wells: ALF-AP-99-086) Mr. Smith was unable to see any way the Board can come to a different conclusion. He asked if there was any Board member who felt there was anything unique about this case that would allow them to vote differently. There was no one.

Mr. Hanson noted that at the previous hearing there were a few Board members who were ambiguous about the 20% lot coverage requirements however the final conclusion of a unanimous denial was clear.

Mr. Smith responded that he was not in attendance at that meeting however the SMRPC subsequent clarification supported the Board's determination that the 20% buildable portion of the lot does not apply to the entire lot but only to the non RP portion of the lot. Mr. Smith noted that the Definitions Section of the Zoning Ordinance, specifically the definition for "Coverage – Building" is clear on this point as well.

Mr. Hanson agreed that it was somewhat confusing at the 2008 meeting however it was subsequently made very clear that the 20% buildable lot coverage only applies to the non RP portion of the lot and not the entire lot.

Mr. Smith noted that by eliminating the RP portion of the lot the applicant would still be able to build a structure, albeit smaller than what she currently proposes.

Mr. Horn stated for the record that the Board's decision was based on the Ordinance which is clear that the basis from which the 20% maximum coverage is measured includes only the portion of the lot located outside the Resource Protection District, and not the whole lot. Mr. Horn also noted that this was confirmed by the Town Planner.

Mr. Deletetsky reminded everyone that the vote to deny, on the last application, was unanimous.

Mr. Smith again asked if there was anyone who, based upon current law, felt there was any compelling reason to hear this case and if anyone felt they might come to a different conclusion.

Mr. Horn noted that there is nothing new in this appeal, that it is a reiteration of the 2008 application.

Mr. Smith noted that the Board had not opened the case for public input. The reason for this was Mr. Horn's motion not to hear the case.

**Mr. Horn Moved to not hear this case.
HORN/DELETETSKY 5/0 UNANIMOUS**

Mr. Smith noted that the motion has carried and this case will not be heard. He informed the Applicant that the current Board has been together as a team for a long time. They sat on the

2008 case and saw nothing in the recently presented documentation which would suggest that they would not come to the same conclusion. The Board feels that the Code Enforcement Officer's 2008 decision, which he has taken again in this matter, is the correct one.

Mr. Smith informed the Applicant that she is within her rights to contact the Town Manager if she feels she has been treated unfairly, however this Board has decided not to hear this case. It has been determined that the Board does have jurisdiction in this matter however the case does not have standing.

E. CODE ENFORCEMENT OFFICER BUSINESS – None

Mr. Lempicki noted that there are no new cases pending at this time. However he noted that there are several new ordinances on the ballot for the June 8th Town Meeting.

Mr. Horn suggested a workshop to review the new ordinances after the Town Meeting.

Ms. Smith agreed to ask Mr. Lockman, SMRPC to attend and instruct the Board on the new ordinances.

F. OTHER BUSINESS –

Mr. Deletetsky Nominated Mr. Duell as Vice Chair.
DELETETSKY/HORN

Mr. Duell accepted the position of Vice Chair.

Mr. Horn Nominated Mr. Deletetsky as Secretary.
HORN/MAURNO

Mr. Deletetsky accepted the position of Secretary.

Michael Gaudette asked to address the Board. Mr. Gaudette is a builder from New Hampshire who is working on a project at 297 Main Street (Map 7 Lot 17). On May 18, 2010 the Code Enforcement Officer issued a Stop Work Order for this project. Mr. Gaudette asked to submit a packet of information regarding his background and work experience as well as the specifics of this project, he asked the Board to hear his application on an emergency basis as specified in Article 5.3 of the Zoning Ordinance.

Mr. Smith responded that the Board spends a great deal of time preparing before a meeting and it would be unfair to ask the Board members to accept and digest Mr. Gaudette's material on such short notice. Mr. Smith also noted that in the fifteen years he has served on this Board they have never agreed to hear a case "cold turkey". In the same manner the Board does not generally allow submittal of new material on meeting night. The members must be given time to review and digest documentation prior to the hearing.

Mr. Smith reviewed Article 5.3. He did not see that this case involves a "flagrant miscarriage of justice". Mr. Smith also pointed out that the waiver of the 30 day time frame is intended to extend the time frame, not reduce it.

Mr. Horn agreed that the language of Article 5.3 refers to an extension not a reduction of the 30 day time frame.

Mr. Lempicki informed the Board that Mr. Gaudette was issued a building permit for “interior work only”. The house was built in the 1800’s and requires review by the Historic Preservation Commission. Mr. Gaudette took it upon himself to demolish a rear deck without permission which resulted in the Stop Work Order.

The Secretary pointed out that the ordinance requires notification of abutters as well as the publishing of notice in a local newspaper at least two weeks prior to the meeting.

Mr. Smith agreed that the abutters need to be informed. He noted that the Applicant needs to go through due process and should prepare and submit an application through the Land Use Office.

Mr. Horn asked if Mr. Gaudette was going to appear before the Planning Board.

Mr. Gaudette responded that he has a Site Plan Review drawn up and will be submitting it to the Planning Board. He noted that he is not asking for a variance, he just wants to get back to work.

Mr. Lempicki informed the Board that the only person who can allow construction or demolition in town, is the Code Enforcement Officer, with the issuance of a permit. Mr. Lempicki noted that on the Friday Mr. Gaudette came in to see him, he (Mr. Lempicki) was out because of a family emergency. He noted that Mr. Gaudette could have come in earlier, or waited until the following Monday before removing the structure. Mr. Lempicki also noted that there are three abutters who have complained about what was done.

Mr. Smith asked if the Board has the authority to remove a Stop Work Order.

Mr. Horn responded that the Applicant needs to follow proper procedure. He needs to go before the Planning Board and then come to this Board.

Mr. Lempicki agreed with Mr. Horn and added that Mr. Gaudette has the right to appeal his (Mr. Lempicki’s) decision to this Board or take the Town to court.

Mr. Hanson also agreed with Mr. Horn that this matter should first go to the Planning Board.

Mr. Deletetsky stated that this Board does have the authority to overturn the Code Enforcement Officer’s decision to issue the Stop Work Order.

Mr. Gaudette pointed out that all he wants is to get back to work on the interior of the building until they can resolve the issue of the stop work order regarding the deck. He noted that he has men out of work. The deck he removed was a safety hazard which could have caused an injury and opened both him and the property owner up to a lawsuit.

Mr. Smith informed Mr. Gaudette that he can not circumvent due process. Mr. Gaudette needs to file an Administrative Appeal asking this Board to overturn the Code Enforcement Officer’s decision.

Mr. Deletetsky agreed that this Board has the authority to overturn the Code Enforcement Officer's decision to issue a Stop Work Order. However he also expressed concern that for this Board to overturn something as serious as a Stop Work Order, particularly on a historic building, sends out the message that it is cheaper and easier to ask for forgiveness than to follow the rules. He noted that once a historic structure is lost it's gone forever.

Mr. Gaudette responded that the porch he removed was added to the house in 1967.

Mr. Smith suggested that Mr. Gaudette is asking to keep the Stop Work Order on the porch area but be given permission to resume work on the interior of the house.

Mr. Deletetsky responded that it is his opinion that this should be left up to the Code Enforcement Officer. If Mr. Lempicki felt this was a minor infraction and was willing to work with Mr. Gaudette that would have been one thing, however if Mr. Lempicki felt this was a gross violation and he put a stop to all work on the property. This was Mr. Lempicki's choice.

Mr. Smith noted that the stop work order may be causing economic injury to the contractor and the workers.

Mr. Deletetsky responded that this alone leads to better enforcement. If someone can violate the Town's zoning and not suffer financial damage there is no impetus to not circumvent the ordinances.

Mr. Gaudette again stressed that he removed the porch for safety reasons. He intends to put another porch up in its place, one that will be more reflective of the 1830's than the 1960's. One of his men actually fell through the rotten porch. He made several attempts to contact Mr. Lempicki and was unable to do so, and the only reason he removed the deck was because he felt one of his workers or a trespasser might get hurt.

Mr. Gaudette acknowledged that he could have asked the Fire Chief to come look at the porch before he removed it and he regrets not doing this.

Mr. Smith again stated that Mr. Gaudette needs to follow proper procedure. He needs to file an application with the Land Use Office.

Mr. Horn reminded him that there is a procedure and it will take time and things can not be rushed.

G. ADJOURNMENT –

Mr. Deletetsky Moved to Adjourn at 8:00 p.m.
DELETETSKY/DUELL 5/0 UNANIMOUS

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on June 24, 2010