

**OGUNQUIT ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 22, 2012**

CALL TO ORDER - 7:00 PM

Members Present: Larry Duell – Vice Chairperson
 Glenn Deletetsky– Secretary
 Mike Horn
 Doug Mayer – 1st Alternate
 Peter Griswold – 2nd Alternate

Members Excused: Jay Smith – Chairperson
 Roy Wooldridge

Mr. Duell noted that due to the excused absence of Mr. Smith and Mr. Wooldridge he (Mr. Duell would be acting as Chair for this meeting, he also appointed Mr. Mayer and Mr. Griswold as full voting members for the purpose of hearing this application.

ACCEPTANCE OF MINUTES - October 27, 2011.

**Mr. Deletetsky Moved to Approve the Minutes of the October 27, 2011 Meeting as Amended.
DELETETSKY / GRISWOLD 5/0 UNANIMOUS**

UNFINISHED BUSINESS - None

NEW BUSINESS –

- 1. ROBERT PURCELL – 17 Larry’s Lodge (Map 13 Block 5-B-3). Variance Appeal. Request to retain an existing 6’x8’ storage shed installed within the property’s rear setback. Said shed was placed without proper permits.**

Mr. Duell asked if there was any Board member who felt he had a conflict of interest sufficient to disqualify him from hearing and deciding this application. There was no one.

Mr. Duell asked for confirmation that the Board had jurisdiction to hear, and decide, this application. It was agreed that it did.

Mr. Purcell addressed the Board. Mr. Purcell informed the Board that he has been coming to Ogunquit for twenty five years. He had a storage area attached to the back of his cottage which he used for all of his storage needs. Last year he and his wife decided to install a washer and dryer in that storage area, which would displace everything being stored in there. As a result they decided to put up a second storage shed. They requested permission from the Condominium Association’s Board of Directors and they spoke to their abutting neighbors at the Gazebo Inn.

Mr. Purcell did obtain all necessary permits to install the washer and dryer but he inadvertently did not obtain a building permit to put up a second shed. This was an oversight and was not intended to hide any actions on his part from the Town. He noted that the Larry's Lodge Condominium property is a very small closed community with only eleven properties. Everyone up there knows each other and no one has expressed any concerns with the placement of his shed.

Mr. Purcell is asking the Board to allow him to keep this second shed despite the Code Enforcement Officer's order to remove it.

Mr. Horn asked how long ago the attached shed was put on the cottage.

Mr. Purcell responded that it was on the house when he purchased the property twenty-five years ago.

Mr. Mayer asked if there is any other location on the lot where the shed could be placed.

Mr. Purcell responded that the only other place would be against the building, however this would block an emergency window. He also informed the Board that the Condominium Association's Director selected the location for the shed.

Mr. Duell asked how far the back of the house is from the property line.

Mr. Purcell responded that it is approximately twenty feet.

Mr. Horn pointed out that the side distance is approximately fifteen feet. He also noted that the site plan submitted by the Appellant is his own drawing and not a professional survey.

Mr. Lempicki added that the Appellant's sketch is essentially correct. It is the rear setback which is the violation. He also pointed out that the house is legally nonconforming with regard to the setbacks.

Mr. Horn referred the Board to Table 703.1 of the Ogunquit Zoning Ordinance which states that the side and rear setbacks in the General Business District 2 (GBD2) are fifteen feet (15'). He also noted that it has been mentioned that the shed might be moved closer to the house. Mr. Horn also referred the Board to Footnote #10 which would increase the setback to twenty-five feet (25') which the Applicant still could not meet.

Mr. Lempicki stated that the twenty-five foot rule applies to the business on the abutting lot only if that business was going to put up a structure. Because it abuts a residential zone the business would have to meet the twenty-five foot standard. However because Mr. Purcell is a residential use he would only have to meet the fifteen foot setback requirement.

Mr. Griswold asked if the Larry's Lodge owners hold the land in common. He referred to Unit 15 across the street from Mr. Purcell's home which appears to have a large lot. He also asked if there is an area within the condominium property where the shed might be located.

Mr. Purcell responded that there is a large field which contains shuffleboard and other recreation areas.

Mr. Mayer confirmed that the land in this condominium complex is held in common by all the owners.

Mr. Purcell confirmed this but added that he could not place something in his neighbor's yard. Each resident has a plot of land and even though the land is "common land" each resident is bound by his/her own lot boundaries.

Mr. Griswold suggested the other residents of Larry's Lodge might want sheds as well. He asked if the condominium association might designate an area where residents might place storage sheds.

Mr. Purcell agreed but added that he may be the only resident without a shed, except for his neighbor who has a basement.

Mr. Duell pointed out that Unit #4 has a shed but it is located right against the house and he probably just meets the setbacks.

Mr. Deletetsky pointed out a "common area" just on the left as one enters the complex, he also noted that the areas around each dwelling would be "limited common area" which means it is limited to each individual dwelling. However the Condominium Association could allow for a shed to be placed in the "common area" with a vote by the members.

Mr. Purcell responded that the area to the right of Unit #2 is a very small area and he knows he would never receive approval. Inside the cul-de-sac is a recreational area, and while he understands the suggestion, he knows he would never receive approval, and he wouldn't even bother to ask.

Mr. Griswold asked how high the rear windows of the house are from the ground.

Mr. Purcell responded that he believes them to be four feet.

Mr. Duell asked if there were any additional questions from the Board for Mr. Purcell. There were none.

**Mr. Horn Moved to Close the Public Portion of the Hearing at 7:20 p.m.
HORN/DELETETSKY 5/0 UNANIMOUS**

Mr. Duell informed Mr. Purcell that the public portion of the Hearing had been closed, however it may be reopened if the Board has additional questions as deliberations progress.

Mr. Duell summarized that this application involves a shed which was built without proper permits and which intrudes into a setback by approximately twelve feet.

Mr. Horn referred the Board to the definition of “setback” as stated in the Ogunquit Zoning Ordinance, Article 2 - Definitions Section.

Setback, Rear

The horizontal distance from the rear lot line to the nearest part of a structure, including any roof eaves, soffits or overhangs.

Setback, Side

The horizontal distance from the side lot line to the nearest part of a structure, including any roof eaves, soffits or overhangs.

He noted that in the General Business District 2 (GBD2) the side and rear setbacks are both fifteen feet (15’).

Mr. Horn confirmed that the shed is currently located three feet from the rear setback which means the Appellant needs a variance of twelve feet (12’). He agreed that the easiest solution would be to find an alternate location for the shed, however Mr. Horn agreed that given the configuration of his parcel there really is no other place to put it except in the front of the house which seems unreasonable from an aesthetic standpoint. Even moving it to the sides of the house would not satisfy the setback requirements.

Mr. Mayer noted that he had looked throughout the Ordinance in an attempt to see if condominiums may be treated differently from privately owned parcels. The only references he was able to locate are in Article 14 Condominium Conversions which did not contain anything which would help Mr. Purcell. Mr. Mayer also reviewed the Ordinance regarding “multi family developments” in Section 9.12.b which was also of no help to this applicant, in fact it is even more restrictive than Table 703.1.

Mr. Griswold confirmed that the Town tax record indicates that this applicant is within the lot coverage requirements.

Mr. Horn agreed that lot coverage is not an issue, the problem is with setback violation.

Mr. Duell asked if the Board members would review the six variance standards as outlined in Section 5.2.B.2.a of the Zoning Ordinance.

Mr. Deletetsky responded that compared to most condominium complexes in Ogunquit Larry’s Lodge is a massive piece of land from a density standpoint. There is a lot of open space, not only in the cul-de-sac. There are another few acres on the southwesterly portion of the parcel, and while this may not be the most convenient solution for Mr. Purcell, it remains a viable option. Mr. Deletetsky also pointed out that the shed in question is a standard built shed, an option might have been to expand the first shed where the washer and dryer were installed, to accommodate additional storage. This could have been done without obstructing the emergency exit windows and would also have not violated the setbacks.

Mr. Duell reopened the Public Hearing and asked Mr. Purcell if the storage shed off the back of the Gazebo is an Association shed.

Mr. Purcell responded that it is an equipment shed.

Mr. Griswold noted that the rear window to the left of the washer/dryer shed appears to be lower to the ground than the window on the right. This may interfere with emergency egress.

Mr. Deletetsky pointed out that there are still twelve available feet on the right side of the attached shed.

Mr. Purcell responded that the area to the left could be used however any shed placed there would have to be half height and would not provide him with the space he requires. He also agreed that each home has a “plot plan” the only real common space is the center area. To reconfigure his shed he would have to take it apart. He added that if he hadn’t put in the washer / dryer he wouldn’t have a problem.

At this time the Board reviewed the standards which must be met in order for the Board to approve a “Relaxed dimensional Variance”:

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

Mr. Horn agreed that the applicant meets this standard.

Mr. Mayer suggested that most of the buildings in Larry’s Lodge are small and may just fit the setbacks.

Mr. Duell responded that the buildings to the rear of the parcel are large and they all have sheds.

Mr. Purcell informed the Board that his parcel is the smallest one in the complex.

It was agreed that due to the small size of the dwellings and the individual “limited common areas” allotted to each owner, the circumstances are unique.

- 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; **MET***

It was agreed by the Board that there has been no input from the other residents of Larry’s Lodge or from the abutters expressing any concern about the placement of this shed, and the granting of the variance allowing the Appellant to keep the shed in its current location would not adversely effect the neighborhood. As such the Appellant meets this standard.

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

The Board unanimously agreed that due to the fact that it was the Appellant who placed the shed within the setback and without a proper building permit, the Appellant has not met this standard.

- iv. *No other feasible alternative to a variance is available to the petitioner;*
NOT MET

Mr. Horn noted that there is the possibility to expand the shed which currently houses the washer and dryer. While this may not be the Appellant's first choice it is a feasible alternative.

The Board unanimously agreed with Mr. Horn, and confirmed that this standard has not been met.

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

The Board unanimously agreed that this standard is met and that the granting of the variance would not effect the natural environment.

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

The Board unanimously agreed that this property is not located within the Shoreland Zone and thus this standard has been met.

Mr. Duell summarized that the two standards which are of concern are numbers iii and iv. He stated that he would have a difficult time reconciling these two standards and granting the variance.

Mr. Duell summarized that standard iii states that the practical difficulty is not the result of action taken by the petitioner or a prior owner. By putting the shed where he did the petitioner (Mr. Purcell) caused the difficulty.

Mr. Duell summarized that standard iv states that no other feasible alternative to a variance is available to the petitioner.

Mr. Purcell stated that he has spent over \$7000, and the shed is already there and it does not seem feasible for him to now remove it. He suggested that there may be an argument regarding the definition of "feasible".

Mr. Duell agreed that this may be true, however there is no getting around the fact that the Board has determined that Standard iii has not been met and that ALL standards must be met in order for the Board to grant a variance.

Mr. Deletetsky reminded the Applicant that if a building permit had been applied for when the shed was put in, the Code Enforcement Officer would have caught the setback violation and would have given Mr. Purcell suggestions as to legal alternatives.

The other Board members agreed again that Standard iii has not been met.

Mr. Mayer noted that the fact that the shed is already in place does not negate the fact that it was placed illegally in violation of the setback restrictions and without a proper building permit.

Mr. Griswold asked if a Disability Variance would be applicable in this case.

It was determined that it is not.

Mr. Horn Moved to Deny the Applicant's request for a Variance, said motion is based upon Standard iii and Standard iv not being met as outlined above.

Mr. Duell informed the Appellant that these six standards are State standards and the Board's hands are tied when applying them.

Mr. Purcell asked if there is an appeal process to the Board's decision.

Mr. Duell responded that he may file an appeal with the York County Superior Court.

Mr. Duell restated Mr. Horn's motion:

**Mr. Horn Moved to Deny the Applicant's request for a Variance, based upon the Board's determination that Standard iii and Standard iv were not met for the reasons stated above.
HORN/DELETETSKY 5/0 UNANIMOUS**

Mr. Duell confirmed that the motion has passed and that the Applicant's request for a variance has been denied.

Mr. Purcell asked if there is period of time wherein he must have the shed removed.

Mr. Lempicki responded that he should come into the Land Use Office to discuss it.

At this time the Board summarized its decision for the Findings of Fact for this case.

CODE ENFORCEMENT OFFICER BUSINESS – None

OTHER BUSINESS – None

ADJOURNMENT –

**Mr. Mayer Moved to Adjourn at 7:55 p.m.
MAYER/GRISWOLD 5/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on January 31, 2013