

**OGUNQUIT ZONING BOARD OF APPEALS
MEETING MINUTES
JANUARY 31, 2013**

CALL TO ORDER - 7:00 PM

Members Present: Jay Smith - Chairperson
Larry Duell – Vice Chairperson
Mike Horn
Doug Mayer – 1st Alternate

Members Excused: Peter Griswold

Members Absent: Glenn Deletetsky– Secretary

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

Mr. Smith noted that due to the resignation of Mr. Wooldridge and the absence of Mr. Griswold and Mr. Deletetsky, Mr. Mayer would be acting as a full voting member for the purpose of hearing this application.

ACCEPTANCE OF MINUTES – March 22, 2012

**Mr. Horn Moved to Accept the Minutes of the March 22, 2012 Meeting as Submitted.
HORN/DUELL 4/0 UNANIMOUS**

UNFINISHED BUSINESS - None

NEW BUSINESS –

- 1. BARRY KAYE – 55 Ocean Street – Map 9 Block 9 – Setback Variance Appeal Under Section 5.2.B of the Ogunquit Zoning Ordinance.**

Mr. Smith asked if there was anyone who felt he might have a conflict of interest sufficient to disqualify him from hearing and deciding this case, there was no one.

Mr. Smith asked for confirmation that the Board has standing to hear and decide this case. It was agreed that it did.

Barry Kaye addressed the Board. Mr. Kaye summarized that when he purchased the property fifteen years ago a shed was already in place. Four or five months ago he noticed that the shed was deteriorating and he decided to replace it. He acknowledged that the old shed was 6 foot x 6 foot and that the new shed is 8 foot x 8 foot. He purchased the current shed at Lowes, had it delivered, and gave away the old shed. After the new shed was put in place he received a letter

from the Code Enforcement Officer who informed him that the new shed did not meet the setbacks. Mr. Lempicki told him that the shed was four or five feet off from the back setback and two or three feet off from the side setback. He (Mr. Kaye) asked Mr. Lempicki if he could move the shed five feet forward and two or three feet to the left. Mr. Lempicki responded that he could however he would still need a variance for four feet from the back street and two or three feet from the side neighbor. He noted that the shed looks good; it is used to store a lawnmower and other tools. He asked if he could bring the old shed back if the variance request is denied.

Mr. Smith responded that this applicant is before the Board requesting a Variance. If the variance is granted the shed may remain, if the variance is not granted then Mr. Kaye will be free to consider other options. He added that the Board is required to act upon the documents which have been presented.

Mr. Horn noted that the street address for the house is Ocean Street however the physical location of the front of the house is somewhat confusing because it is a corner lot.

Mr. Smith responded that the answer is in the Zoning Ordinance definition of “corner lot” which states that a corner lot is:

“A lot which has frontage on two or more approved streets or private rights-of-way. Corner lots are subject to front setback requirements on all streets on which they have frontage”.

Mr. Smith added that in this case the Applicant has two (2) twenty foot (20’) setbacks which he has to meet.

Mr. Mayer asked if the lot in question is a legally non-conforming lot.

Mr. Smith confirmed that it is.

Mr. Mayer asked if the Kaye’s house is on Public Sewer and Public Water.

It was confirmed that it is.

Mr. Mayer noted that this means the maximum lot coverage is 30%.

Mr. Smith summarized that Mr. Kaye’s lot is nonconforming because it is substandard in its total square footage and the shed is nonconforming because it overlays the setback area.

Mr. Horn confirmed that the lot coverage, as it stands, now is only 20.6% which means that lot coverage is not an issue in this case.

Mr. Mayer asked if this shed is considered to be a “structure” and if it is included in the lot coverage calculations.

Mr. Smith responded that it is considered to be an “accessory structure” and it is included as part of the maximum total square coverage calculations. He went on to point out that the last sentence

of the definition of an Accessory Structure states that “*Accessory Buildings or Structures shall meet all dimensional requirements of this Ordinance*”.

Mr. Smith asked if the Applicant had anything further to add. He did not.

Mr. Smith opened the floor to anyone in the audience who wished to speak for, or against, this application.

Anna Santosuosso (17 Seaview Ave. – Map 9 Block 8) addressed the Board. Mrs. Santosuosso is a direct abutter of the property in question. She noted that both properties are approximately 4,200 square feet and both properties share both Seaview Avenue and Bayview Avenue. She stated that the shed was delivered in the middle of the night, it creates a disruptive distraction, and it encroaches onto her private property. Mrs. Santosuosso submitted two photographs and a plot plan of the property. She stated that the shed is practically on her front lawn and that there is no excuse for not obtaining permission to put up a shed in a legal way. She stated that this shed effects her privacy, her use of her screened-in porch, and access in case of an emergency. Mrs. Santosuosso informed the Board that the shed is too close to her porch and she added that any variance granted will set a precedent.

Mr. Duell asked how much closer the new shed is to her property than the old shed was.

Mrs. Santosuosso responded that the old shed was moved around, it was smaller, and it was hidden within vegetation.

Mr. Horn asked when the old shed was placed on the property.

Mrs. Santosuosso responded that it was built just prior to Mr. Kaye’s purchasing the property, sometime around 1999.

Mr. Kaye responded that the shed was in place when he bought the property in 1999, and it was never hidden. He added that Lowes delivered the shed at 2:00 in the afternoon, not the middle of the night, and he met them there.

Raymond Wiggins (26 Bayview Avenue – Map 10 Block 19) addressed the Board. Mr. Wiggins’ property also extends from Bayview to Seaview and he lives on the other side of Mrs. Santosuosso. The original shed was only about 4 square feet and he doesn’t know if it met the setbacks. The new shed is 8’x8’ and it sits very close to the property line and the street. He agreed that the shed did not come in the middle of the night. It was built by carpenters who took two days to build it and he never saw a building permit. When Mr. Lempicki came to look at it, he (Mr. Wiggins) happened to be out walking and he spoke to him. Mr. Lempicki told him there were four violations. Mr. Wiggins also informed the Board that Mr. Kaye should have known he needed a building permit, he (Mr. Kaye) recently had the property surveyed and the surveyors told Mr. Wiggins that the purpose was to add onto the house. Mr. Wiggins was also opposed to the shed which blocks his view down Seaview.

Frank Santosuosso was also opposed to the granting of a variance.

Suzanne Wiggins expressed concern that the granting of variances for property in this neighborhood will effect the “flavor” of the neighborhood. She pointed out that she would like to enlarge her deck but acknowledges that this isn’t legal and so she does without. Her primary concern is that the granting of this variance request will set a precedent.

Mr. Kaye responded that he bought this property fifteen years ago and the 6’ x6’ shed was already on site.

Mr. Smith asked if there was anyone else who wished to be heard. There was not and the Public Portion of the meeting was closed at 7:35 p.m.

Mr. Smith summarized that this application involves a property in the Residential District with both a non-conforming lot and a non-conforming house. This particular Variance Request does not involve the house; it involves a shed which has been placed within the property setbacks. The requirement is a twenty foot setback for the front (in this case there are two fronts for this corner lot), and a fifteen foot rear setback which abuts the neighbor.

Mr. Smith noted that there are several sections of the Zoning Ordinance which may come into play in this case however the final decision will be based primarily on the five criteria in Article 5.2.B.2, all of which must be met. Mr. Smith asked if any Board members had questions.

Mr. Duell referred to the Applicant’s 2011 survey and he noted that the original shed appears to have been approximately fourteen feet from each lot line, and the “plot plan” measured by Mr. Lempicki indicates the new shed as being approximately three feet from one line and twelve feet from the other lot line. It seems clear that the new shed is not in the same location as the original shed. Given that the original shed was a non-conforming structure it could have been repaired or replaced in the same location, as cited in Section 3.3.E.

Mr. Horn pointed out that the currently existing shed was built without a valid building permit and as such it needs to be removed. He suggested that the setback violation is a secondary consideration to the violation of the permitting process.

Mr. Duell pointed out that the VISION Tax Card indicates that a Building Permit for an 8’ x8’ shed was issued for the shed on December 3, 2012. He suggested that the Applicant may have been issued the permit retroactively.

Mr. Mayer noted that Mr. Lempicki’s letter to the Applicant was dated November 19, 2012. This letter indicates that at that time there was no permit.

Mr. Smith pointed out that if the original shed had been located within the setback area it could be argued that it was a non-conforming “grandfathered” structure. In that case it could have been repaired or reconditioned, however as soon as the applicant moved, or altered, it he has to comply with the law. In this case the applicant chose to get rid of the old shed and get a new one which makes it a new structure which must meet all Town zoning standards.

Mr. Smith went on to say that by every letter of the law the replacement of that shed with what is there today does not meet any of the standards of the conformity portions of the Ordinance. It’s a

non-conforming structure and the non-conformity was aggravated by moving it from where it originally was located. If the Applicant had approached the Code Enforcement Officer before he installed the new shed he might have been given options, but by taking it upon himself he aggravated the nonconformity.

Mr. Smith noted that in the Application the Applicant cited Article 5 which contains six criteria which must all be met for the granting of a variance.

Mr. Nelson informed the Board that in December of 2012 Mr. Lempicki did issue an after-the-fact building permit for an 8'x8' shed. In the comments section of that permit he made a notation that the shed must meet all setbacks per Zoning Ordinance.

At this time the Board reviewed the six criteria of Section 5.2.B.2 of the Zoning Ordinance, all of which must be met before a variance may be granted. Mr. Smith noted for the record that this application involves a request for a relaxation of dimensional standards.

a. Relaxed Dimensional Standards 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;

Mr. Mayer noted that there are a number of non-conforming lots in the neighborhood.

Mr. Smith suggested that, based upon case law, the circumstances of this particular property, "the land" are not unique to the neighborhood, and as such this standard is not met.

The Board unanimously agreed that this standard is Not Met.

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;

Mr. Smith reminded everyone that the abutters perceive this as a disruptive distraction on the neighborhood. He noted that this neighborhood has several non-conforming lots, and some of them have sheds. He also pointed out that this shed is somewhat larger than the one that was there before.

Mr. Horn disagreed that the use or market value of the abutting properties probably will not be effected. He does not see the shed as a source of an undesirable change in the neighborhood.

Mr. Mayer agreed with Mr. Smith. He stated that he walked through this neighborhood and in his estimate only 10% of the properties have sheds.

The Board agreed 3 to 1 that this standard is Not Met (Mr. Horn Dissented).

iii. The practical difficulty is not the result of action taken by the petitioner or a prior owner... As used in this subsection, "practical difficulty" means that the strict application of the

ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Mr. Smith noted that it was the applicant who placed the new shed within the setbacks.

The Board unanimously agreed that this standard was Not Met.

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

Mr. Smith noted that at one time there had been an alternative to the currently existing shed. He also pointed out that alternatives still exist. A storage device might be located within the triangle of area outside the setbacks, although this may not be what the Applicant would prefer.

The Board unanimously agreed that this standard was Not Met.

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

Mr. Mayer pointed out that the new, larger, shed does add a small amount of impervious surface to the lot.

The Board unanimously agreed that this standard had been met.

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

The Board unanimously agreed that this standard had been met.

Mr. Smith summarized that of the six criteria all but two were not met and as a result the Board must deny the requested variance.

**Mr. Horn Moved to Disapprove the request for a variance for 55 Ocean Street.
HORN/DUELL 4/0 UNANIMOUS**

Mr. Smith informed the Application that his Request for a Variance had been denied. He offered that there may be alternative and Mr. Smith suggested the Applicant confer with the Code Enforcement Officer to see what those alternatives might be.

Mr. Smith stated for the record that the applicable sections of the Ordinance for this case are:

Article 1.4

Article 2 Definition of Corner Lot

Article 2 Definition of Setbacks

Article 2 Definition of Accessory Structure

Article 3 Sections 3.1.A

Article 3 Section 3.2

Article 3 Sections 3.3. A, B, C, D, and E

Article 5 Section 5.2.B.2

CODE ENFORCEMENT OFFICER BUSINESS – None

OTHER BUSINESS –

The Board reviewed several training sessions which are offered by the Maine Municipal Association.

Mr. Smith noted that with Mr. Wooldridge's resignation they need to have Mr. Mayer, as 1st alternate, moved to a position of full voting member of the Board.

**Mr. Duell Moved to have Mr. Mayer moved from Alternate Status to Full Voting Member.
DUELL/HORN 3/0 UNANIMOUS (Mr. Mayer abstaining)**

ADJOURNMENT –

**Mr. Horn Moved to Adjourn at 8:00 p.m.
HORN/DUELL 4/0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy
Recording Secretary

Approved on December 5, 2013