

# ZONING BOARD OF APPEALS

## Public Hearing

### MINUTES

Monday, July 30, 2001

7:00 P.M. at the Town Office

ATTENDANCE: Michael Higgins, Chairman; Peter Leavitt; Aurel Gagne; Robert Fey; Lawrence Murch; and Jack Cooper, Code Enforcement Officer.

1. Call to order. Michael Higgins called the meeting to order at 7:02 p.m.
2. Consideration of previous minutes dated June 25, 2001.

MOTION: Peter Leavitt motioned to accept the minutes of June 25, 2001 as written. Seconded by Aurel Gagne.

VOTE: Unanimous.

3. Cragin, Charles & Maureen Map 16 Lot 25 85 Spring Valley Road

Request for reconsideration of an administrative appeal to construct a roof over a gazebo/generator storage area.

DISCUSSION: Christopher Coggeshall, Esq. was present to represent the Cragin's. Peter Schofield, neighbor and Bob Durgin, builder were also present.

Mr. Higgins read into the record a letter dated 7/3/01 regarding a request for reconsideration from Charles Cragin stating that he was not requesting an administrative appeal to construct a roof over a walkway but a roof over a gazebo. Mr. Coggeshall stated that there was some confusion in the original application. Mr. Coggeshall then displayed a copy of the plan originally submitted and clarified that the request is for covering the gazebo only. Mr. Coggeshall referred to the definitions section of the ordinance and the terms "lot measurements" and "setback measurements". Mr. Coggeshall indicated that by definition, roofing over the gazebo doesn't violate the setback requirements.

Peter Schofield, neighbor and association member, had no objection to the request and indicated that the association also had no objection to the plan.

Mr. Leavitt clarified that the set back from the road is the only issue.

Mr. Cooper explained that the support posts make it appear as though a roof were going to be constructed over the walkway. A discussion followed regarding the proposed plans.

Mr. Higgins clarified, for the benefit of the public, the Cragin's request to reconsider the denial of their request for administrative appeal.

MOTION: Peter Leavitt motioned to reconsider the denial of the Cragin's request for an administrative appeal. Seconded by Lawrence Murch.

VOTE: Unanimous.

Mr. Higgins clarified the course of events whereby Jack Cooper granted a permit for a walkway, renovations to the house and a gazebo with the question of a roof over it. Mr. Higgins also pointed out that construction has already taken place and that what remains is the question of the 30' setback requirement and whether or not it applies to this structure.

Mr. Leavitt discussed the definition of a structure.

Mr. Gagne suggested the application be considered a setback reduction and explained what that involves.

Mr. Leavitt stated that he felt the lot was large enough to better locate a shed and generator on the property.

Mr. Coggeshall requested Mr. Leavitt address the set back from the road limit to the nearest part on the principal building as defined in the Land Use Ordinance. Mr. Leavitt responded that this is not the intent of the ordinance. Mr. Fey explained that Mr. Coggeshall was interpreting that definition to mean that the only structure subject to restrictions would be the primary structure. Mr. Leavitt then stated that the function of the Board is to interpret the intent of the ordinance.

Mr. Fey suggested the owner change his application to request a setback reduction. Mr. Gagne also suggested the applicant change his request to a setback reduction and have someone go to the site and measure the distance from the structure to the road. Mr. Cooper stated that he didn't think it would be easy to find the property markers and take an accurate measurement.

MOTION: Robert Fey motioned to uphold the prior decision of the Appeals Board. Seconded by Peter Leavitt.  
VOTE: Unanimous.

MOTION: Peter Leavitt motioned to grant a setback reduction not less than 15' from the road right-of-way for the construction of a gazebo.

Mr. Leavitt then retracted his motion.

Mr. Fey addressed Mr. Coggeshall who requested the Board table the matter. A discussion followed regarding the requirements of a setback reduction. Mr. Coggeshall indicated that he would like to change the request to a request for a set back reduction if it would allow the Cragin's to roof over the gazebo.

MOTION: Peter Leavitt motioned to grant a setback reduction not less than 15' from the road right-of-way to the nearest point of the gazebo. Seconded by Lawrence Murch.  
VOTE: Unanimous.

Mr. Cooper stated that the applicant must submit a plan showing the actual measurements.

#### 4. Power, Georgiana Map 19 Lot 53 7 Stonewall Crossing

Requesting an administrative appeal to construct a 28 x 40' structure for a day care.

DISCUSSION: The applicant was not present.

MOTION: Peter Leavitt motioned to formerly drop the request from the agenda and allow the individual to reapply. Seconded by Robert Fey.

VOTE: Unanimous.

#### 5. Smith, Mark J. Map 15 Lot 23 11 Crescent Shore Rd.

Requesting a variance to retain a deck 3' from the high water mark.

DISCUSSION: Mr. Smith addressed the Board and explained that he didn't obtain a permit for the deck and that he had purchased the property in 1998 and rebuilt the structure to make it safer but at the same time, he also make it larger. Mr. Smith further stated that Elizabeth Algeo of the Conservation Commission had inspected the property and would be submitting a report stating that the deck prevented runoff into the lake. Mr. Smith also stated that the original structure built in 1989 and was grand fathered. Mr. Smith requested the Board allow him to retain the structure.

Ed Parisian, abutter, spoke in favor of the deck stating that it was a nice structure.

Bob Metz, neighbor, also spoke in favor of the deck.

Julie White, neighbor, spoke in favor of the deck.

Mike Ward, neighbor, spoke in favor of the deck stating that it was much safer.

An unidentified person spoke in favor of the deck, also stating that it was much safer.

Mr. Cooper stated that he had no record of a building permit for the old deck and that it did not legally exist. Mr. Cooper also informed the Board of his contact with Elizabeth Algeo of the Conservation Commission who requested Mr. Cooper notify the Board that although the erosion control has been greatly improved at the site, she is not in favor of the deck.

Mr. Leavitt clarified that the applicants were requesting a variance. Mr. Leavitt agreed with Ms. Algeo that the applicant had done an excellent job with their erosion control efforts.

Mr. Smith submitted two photos of the deck in question for the Board's inspection.

Mr. Higgins explained the four points of hardship required to approve a variance request stating that clearly the applicant doesn't meet the requirements of item one.

Mr. Smith submitted a drawing from the prior owner reflecting the original size of the previous deck. Mr. Smith indicated that he would be willing to reduce the size of the current structure to the original size of 2 – 8' x 6'

platforms located 3' to 4' from the water's edge.

Mr. Cooper clarified that 1/1/89 is when the state zoning laws were enacted. Mr. Cooper stated that he did not see or have any documentation showing a deck in existence prior to 1989.

Bob Metz, abutter, stated that there was a deck in place prior to 1989.

Mr. Leavitt stated that concrete evidence would be helpful.

Mr. Gagne noted that the applicant had tripled the size of the deck.

Mr. Cooper stated that in order for the original size of the deck to remain, evidence of the existence and size of the deck prior to 1989 would be required.

Mr. Gagne suggested the applicant trace back to the original owner to obtain evidence.

MOTION: Peter Leavitt motioned to table the matter to the next meeting to allow the applicant to research evidence and obtain affidavits to determine if there was a deck in place prior to 1/1/89.

Mrs. Smith addressed the Board regarding the decks use for erosion control and safety.

Seconded by Aurel Gagne.

DISCUSSION: Mr. Fey indicated that it would be difficult to convince him to vote in favor of retaining the deck.

VOTE: Three (3) in favor. One (1) opposed (Robert Fey). One (1) abstain (Lawrence Murch).

Mr. Leavitt explained to Mr. Smith that he could come back before the Board next month with new evidence and that there would be no additional fees.

6. King, Bruce D. Map 13 Lot 27 157 Raymond Hill Rd.

Requesting a set back reduction of 3.3' to retain a previously constructed barn.

DISCUSSION: Mr. King addressed the Board stating that he had built the barn in question in 1998 thinking that it ran with the property line. He then added 16' to the structure, which brought it too close the property line.

Kathy Plummer, abutter, spoke in opposition to the request and referred to a letter from her husband, David Plummer, also in opposition of the request. Mrs. Plummer explained that there is an ongoing situation with a potential development near her property and that she and her husband are concerned with protecting their assets.

Mr. Higgins read into the record a letter from David Plummer opposing the request.

Mr. Murch requested building details. Mr. King responded that the barn was on blocks and housed three horses.

Mrs. Plummer expressed her concern that the building would be added on to again in the future.

Mr. Higgins discussed the section of the Land Use Ordinance regarding set back reduction criteria, which include "unreasonable interference with abutters". Mr. Higgins explained that the Board needs to determine if the criteria are met.

Mr. Gagne observed that there is very little about the structure that is non-compliant.

Mr. Leavitt indicated to Mrs. Plummer that he understands her concerns, however, her privacy is not being infringed upon.

MOTION: Robert Fey motioned to approve the request for setback reduction subject to the requirements set forth in the Land Use Ordinance. Seconded by Lawrence Murch.

AMENDED MOTION: Peter Leavitt amended the motion to include the condition that the structure be no closer than 16' 7" from the property line.

AMENDED MOTION: Michael Higgins amended the motion to include the condition that the structure can never become a dwelling unit or garage.

VOTE: Unanimous.

7. Callow, Ernest Map 42 Lot 19 40 Lakeside Dr.

Requesting a variance to construct a tool shed within 100' of the high water mark.

DISCUSSION: Mr. Callow addressed the Board and stated that the existing shed also encroaches on the Jackson sideline but that it is grand fathered. Mr. Callow explained that the lot is 110' deep on the town maps and the setback requirements are 15' from the road and 100' from the shore, which wouldn't allow them to build on the lot at all. Mr. Callow further explained that a hardship exists because they cannot store items used in the upkeep of the property or recreational items.

Earl Jackson, abutter, stated that he had no objection to the request.

Mr. Callow explained that the new shed would abut the old one.

Mr. Gagne pointed out to the applicant that they could utilize their 30% expansion allowance by attaching a shed to the camp. Mr. Leavitt added that the 30% expansion is a one-time allowance. Mr. Callow responded that it would be too expensive to add on to the camp and that he wants to continue with the variance request.

Mr. Higgins stated that the applicant could yield a reasonable return without a variance to construct a shed and therefore, does not meet all of the hardship criteria. Mr. Higgins explained that the applicant must meet all four points of hardship. Mr. Higgins then explained that the Board does not have the authority to grant the request and that the only option would be to use the one time 30% expansion allowance.

A discussion followed regarding a neighbor who recently went before the Board for a variance request.

Peter Leavitt moved the question.

MOTION: Peter Leavitt motioned to deny the request for variance based on the applicant's inability to meet the first point of hardship. Seconded by Robert Fey.

VOTE: Four (4) in favor. One (1) abstain (Larry Murch).

Mr. Callow confirmed with Jack Cooper that he could use 30% from the existing shed and 30% from the existing cottage.

#### 8. Other business.

a. Mr. Cooper noted that Stephen and Elizabeth Harvey were currently the only applicants before the Board for the August meeting;

b. Mr. Cooper discussed the current Junk Yard Ordinance violations;

c. Mr. Cooper updated the Board on the Bolduc matter stating that the Bolduc's had 45 days from the date of the last meeting to comply with removing the trailer from the lot;

d. Mr. Cooper discussed the Evan's Notice of Violation;

e. Mr. Leavitt discussed the need for updating the Shoreland Zoning Ordinance with a new definition of "expansion". Mr. Cooper then explained the process involved in amending an ordinance. Mr. Cooper suggested waiting for the results from the Fielder case before revising the ordinance;

f. Mr. Cooper updated the Board on the Fielder matter stating that the Town Attorney had requested the Fielder matter be dismissed;

g. Mr. Fey requested the Board consider amending the ordinance to resolve the discrepancy noted this evening by Christopher Coggeshall, Esq. relative to the definition of "lot measurements" and "setbacks". Mr. Cooper requested the Board secretary contact the Town Attorney in this regard;

h. Mr. Leavitt stated that he was concerned with the Town Attorney, Geoff Holes' interpretation of the Fielder case.

#### 9. Adjourn.

MOTION: Peter Leavitt motioned to adjourn the meeting. Seconded by Aurel Gagne.

VOTE: Unanimous.

ADJOURNMENT: Michael Higgins adjourned the meeting at 8:45 p.m.

Respectfully submitted,

Elisa A. Trepanier  
Recording Secretary