



**ZONING BOARD OF APPEALS MINUTES
August 28, 2006**

Members present: Chairman Matthew Schaefer, Peter Leavitt. Lawrence Murch, Mary Picavet. and Michael Higgins were present. Elden Lingwood was absent.

Staff present: John Cooper, Code Enforcement Officer; Karen Strout, Recording Secretary.

1. Call to order: Chairman Matthew Schaefer called the meeting to order at 7:09 pm.

2. Election of Officers:

MOTION: moved by Larry Murch and seconded by Mary Picavet to re-elect Matthew Schaefer as Chairman of the Raymond Zoning Board of Appeals. Motion carried 4/1 abstention (Schaefer).

3. Approval of minutes:

MOTION: moved by Larry Murch and seconded by Mary Picavet to approve the minutes of the June 6, 2006 special meeting as written. Motion carried 4/1 abstention (Leavitt).

MOTION: moved by Mike Schaefer and seconded by Peter Leavitt to approve the minutes of the June 26, 2006 as written. Vote 3/2 abstentions (Picavet, Murch).

MOTION: moved by Murch and seconded by Leavitt to approve the minutes of the July 31 meeting as written. Vote 4/1 abstention (Higgins).

4. Correspondence:

There was no correspondence.

5. Public Hearings:

**Map 62 , Lot 13 LRR2
33 Mains Farm Road
Bradley C. McCurtain**

Request for an Administrative Appeal from Code Officer's ruling re: Sec. 15, A, 3 (building setbacks) of the Town of Raymond Shore land Zoning Ordinances to allow for a deck on his residence.

A brief presentation was made by Attorney Chris Neagle from the law firm Trough, Heisler, Piampiano, Hark, & Andrucki who was there to represent the McCurtains. Referencing the submitted application he summarized:

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- The McCurtains had purchased the land on Mains Farms Road in 1980.
- The house and deck were constructed in 1986.
- The McCurtains have occupied the residence as their home and primary residence for more than 20 years. They have mowed the lawn area and stored firewood next to the deck on what they thought was their land, which is apparently over the property line according to a survey done by the McDonalds.
- The abutting property owners, Timothy & Katherine McDonald, have had a survey done, and invited Town CEO Jack Cooper to walk the boundaries.
- On June 12, 2006, the McCurtains received a Notice of Violation from the Town CEO referencing a side setback violation.

Attorney Neagle stated that the applicant was requesting the Board of Appeals to grant them a side setback reduction. If granted, they will withdraw the request for an administrative appeal from the CEO's ruling dated June 11, 2006. Attorney Neagle reviewed the standards for granting the setback reduction and commented that he felt the application had met all of the standards. He added that they were not asking for a setback reduction from the water, the lot had been established prior to 1986, it was a residential dwelling, and the nearest house is 200' away. The applicant submitted ten digital photos of the property which included several views from the deck towards the abutting property. The point of the photos was to illustrate that the deck won't invade the MacDonald's privacy since their house is 200' away and is on 35 acres of land. These photos have been placed in the ZBA file.

Comments from abutters:

An email was received on August 23, 2006 from Stephen Fillo, an abutter, who stated he had no objection to the McCurtain's request. This email has been placed in the file to become part of the record.

There was no public comment.

Chairman Schaefer questioned CEO Cooper regarding the property. Jack stated that the residence had been there about 30 years and that the lot was wooded.

Chairman Schaefer referenced a 1999 Survey Plan for Envision Realty Corp. by Land Services Inc with a scale 1" equals 100' scale showing details of the site which reflected the distance from the home to the property line to be more than 20' and the distance line to the deck less than half.

Board member Higgins asked CEO Cooper to explain the violation and whether or not he had measured the distance. Jack explained that the violation was that they were less than 20 feet from the side property line with the deck. He added that had made an attempt to measure it and that the distance from the property line was roughly 10' to the edge of the steps. Jack felt that they would probably qualify for a setback reduction.

Attorney Neagle added that assuming the neighbor's survey is correct, the simplest way to do this was to apply for a setback reduction.

MOTION: moved by Peter Leavitt and seconded by Larry Murch, based on the appearance that the location of a deck has had no negative impact on the neighbors and that the applicant meets all other ordinance requirements, that the Board grant a request for a side setback reduction to 10' from the 20' required by the Shoreland Zoning Ordinance. Vote was unanimous to approve 5/0.

**Map 29, Lot 22 LRR1
99 Myron Hall Road
W. Michael & Carole Carey**

Request for an Administrative Appeal from Code Officer's ruling re: Article III. A. 1.b. (30 % expansion) to allow the inclusion of the volume and square footage of a cabin to that of the cottage in the calculations for a new replacement structure. Plans are to demolish both present structures.

Michael and Carole Carey were present to speak on behalf of their request. On their property, they have a cottage with a footprint of 37' by 28' with a 5/12 gable end roof. There is also a 10' x 12' cabin with a 6/12 pitch gable roof. Both structures are less than 100' from the lake. They would like to totally demolish both structures except for the fireplace and chimney and build a new structure using the the volume and square footage of both structures in the calculations for the replacement structure. They are requesting this in order to get a roof pitch that would allow them a loft in the new building.

Comments from Board:

Board member Higgins asked for CEO Cooper to orient the property to Crescent Lake. They inquired about the lot to the rear of the property and were told that it was a vacant lot. They also asked about the non-conforming lot and CEO Cooper responded that the proposed structure would not be moving any closer and would not be more non conforming. He further added that it would not be covering 15% of the lot. Board member Leavitt asked if they would be further from the lake. The response was that the cabin would totally disappear and they plan to put the new structure back as far as the septic would allow. Chairman Schaefer explained to the applicant that in a recent letter from the DEP to the Zoning Board had been reminded of the model that needed to be followed. Chairman Schaefer asked CEO Cooper asked how the enclosed porch would be added into the calculations. Cooper responded that it would be counted as square footage, but not for volume. Board member Murch asked the applicant how long the property had been in their family. The response was since 1949. Board member Higgins asked how an expansion does not increase the nonconformity. CEO Cooper responded that they allow the 30% as long as the structure is not closer to the water and you cannot cover the lot by more than 20%.

There was no public comment.

Comments from the Board:

There was discussion of the July 20th letter received from Mike Morse of the DEP. Chairman Schaefer asked CEO Cooper how the Town Attorney had interpreted the letter. Cooper responded that his interpretation was the same as the DEP's. Cooper added that Rick Baker of the DEP, his superior, also agreed with the Morse letter. Chairman Schaefer commented that he did not know if there were any other options, and tried to offer various scenarios to the Board, one of which was tabling this application until CEO Cooper could talk to Mike Morse about this particular application. The applicant added that the impact to the lake would be a lot less with the new structure. Carey stated that he would rather have a decision from the Board now, rather than to wait another month. Board member Mary Picavet commented that it would seem logical to ask the DEP to look at the application. Schaefer said that the Board could hold a Special Meeting in order to get DEP input. Higgins comment was that he felt they were "grasping at straws" and the DEP would probably say no. Consensus was that it would be a better idea to table this application to get input from the DEP.

MOTION: moved by Murch and seconded by Schaefer to continue the this discussion and table the application and public hearing to a Special Meeting on Tuesday, September 5, 2006, at 8 pm in order for CEO Cooper to discuss the application with either Mike Morse or Rick Baker of the DEP.

6. Other Business:

- a. Discussion of letter dated July 20, 2006, from Mike Morse of the DEP

CEO Jack Cooper reported that he had talked to the Town Attorney regarding the letter referencing the Khuen's variance, and that he had agreed with the DEP's interpretation. The Town Attorney did not recommend that the Appeals Board reconsider their previous action because too much time had evolved. The Board, however, should use this information when looking at future applications.

- b. Proposed ordinance amendment to Article III.A.1.b. (30% expansions).

Consensus was that the Board would need guidance from DEP before they amended this article of the ordinance.

7. Adjournment:

MOTION: moved by Higgins and seconded by Murch to adjourn at 8:37 pm. Vote was unanimous.

Karen Strout
Board of Appeals Secretary