



Monday, October 29, 2007

BOARD OF APPEALS
minutes

Jordan Small Middle School Broadcast Studio
7:00 pm

ATTENDANCE: Chairman Matthew Schaefer; Elden Lingwood; and Peter Leavitt.

MEMBERS ABSENT: Mike Higgins, Lawrence Murch, and Mary Picavet.

STAFF PRESENT : John Cooper, Code Enforcement Officer; and Karen Strout, Recording Secretary.

OTHERS PRESENT: Richard Bouthillette, Carla Robinson, Ellen Robinson, Elaine Wormwood, Carol Goodwin-Locke, Bill Robinson, Karen Huntress, Paul White, and Alan Shepard.

1. Call to order: Chairman Schaefer called the meeting to order at 7:05 pm at the JSMS Broadcast Studio.

2. Approval of minutes dated July 29, 2007.

MOTION: moved by Peter Leavitt and seconded by Elden Lingwood to approve the minutes as submitted.

Vote: 3/0.

3. Public Hearings:

Continued from July 29, 2007

- a. Map 25, Lot 16 LRR1
Two Acre Island
Heirs of Carl J. Goodwin c/o Elaine Wormwood
Requesting an administrative appeal from the denial of the issuance of a building permit after the 12 month deadline for rebuilding had elapsed.

Chairman Schaefer opened the discussion and asked the applicants if they they would like both applications heard simultaneously. Attorney Shepard responded for the applicants by answering in the affirmative.

1.

Alan Shepard, attorney for the applicant, gave a brief review of past meeting's testimony, and Went through the variances to make the case.

Boardmember Peter Leavitt responded that the hardship being created was the result of the fact that the applicant failed to renew the permit , and that was why they were asking for for a variance.

Chairman Matt Schaefer asked Shepard if he had any language around self created hardship. Shepherd responded that he did not have citations, but he would be happy to submit those afterwards.

There was considerable discussion on reasonable return, self created hardship, permitting, and substantial completion.

PUBLIC COMMENT:

Karen Huntress elaborated on work they had done to the site since the fire. She said they had spent \$4300 on a well, \$3400 on a survey, \$2300 on excavation, \$3000 on a dumpster, and had done tree work-\$15,000 work after permitting had been obtained. They could not get work done because of condition of the site, it was too wet. They did not have 12 months to work on permit. Huntress also commented that the permit should have been for \$75,000, not \$150,000 that was stated on the permit in the official use box, as all of the labor was to be donated.

Peter Leavitt asked for the dates of the work to be restated. He was told the well went in July or August of 05. The tear down was summer of 04, waste management September of 04, and the survey September 22, 2004. Trees were also removed in September of 04.

Bill Robinson stated that he had made out the building permit. He further commented that the property never dried out. The concrete contractors could not meet the window to pour the slab. His part was to have done the framing and put it on the foundation. He did not have the name of the contractor who had been selected. He conceded that he was aware that permit had an expiration date.

The Board discussed the contents of the permit and concluded that it was pretty basic and that the actual footprint of the structure was smaller, but they had added volume by changing the pitch of the roof.

Paul White, an abutter, made the following comments. He felt that the two applications should be separated, as it was difficult to separate the comments that were for the Administrative Appeal and the Variance request.

There was considerable discussion about what constitutes a substantial start. **Code Officer Cooper** commented that the work they were considering as a substantial start were not items listed on the permit. Putting in a foundation would be considered a substantial start.

There was further discussion about the septic system on the site and the applicants ability to meet the standards. **Elaine Wormwood** commented that a septic test had been done and was in the file at the Town Office. **White** stated his concern that the project is less than 50 feet from the water and that the septic is not being treated.

At 8:18 pm the Board was urged to make a ruling on the Administrative Appeal. Chairman Schaefer reread the following documents into the record that were presented at the July 30th, 2007 public hearing: a letter from an abutter, **Joan Pelletier**, in support of granting the appeal and a letter from **Mike Morse** of the **Department of Environment Protection** citing Section 16-E supporting the Code Officer's decision to deny a new permit. Morse further stated in reference to the Variance" should the applicant return to the Board with a variance application to construct a new structure that does not meet the minimum shoreline setback the Department recommends that the Board also deny such a variance request. The basis for a denial would simply be that it would be impossible for the applicant to demonstrate undue hardship. The applicant had received a valid permit and failed to act on it, allowing it to expire. It is obvious that the hardship is the result of action of the applicant (undue hardship criterion #4).

Chairman Schaefer asked Bill Robinson why he did not ask for an extension on the permit or contact Jack Cooper. He answered that "that he did not have a mind thought" about the permit. He was busy and his part was to come in for the construction part. It fell through the cracks. He added that it was too wet or the contractor was not available. He conceded that being a contractor that he had taken out many permits and was aware that permits had expirations.

9:05 pm

MOTION: moved by Schaefer and seconded by Leavitt that the Board find Section 16-E as the basis for use based permits issued. (dvd reference 32:10)

Vote: 3/0.

MOTION: moved by Leavitt and seconded by Schaefer that a finding of fact is that a permit was obtained appropriately within the allotted time frame from the time of the fire. (dvd reference 36:17).

Vote: 3/0.

MOTION: moved by Leavitt and seconded by Lingwood that a finding of fact is that by the evidence and testimony of the Code Officer that there is an expiration time frame involved with the issuance of building permits. (dvd reference 36:33)

Vote: 3/0.

MOTION: moved by Leavitt and seconded by Schaefer that a finding of fact is that referencing Section 16 -E that there was not a substantial start in construction or use within one year of the issuance of the permit. (dvd reference 37:19)

Vote: 3/0

MOTION: moved by Schaefer and seconded by Leavitt that the Board make a finding that the decision of the Code Enforcement Officer was clearly not contrary to the Shoreland or Land Use Ordinances of the Town of Raymond. (dvd reference 38:16)

Vote: 3/0.

MOTION: moved by Schaefer and seconded by Lingwood to deny the request for an Administrative Appeal. (dvd reference 38:58)

Vote: 3/0.

The Board continued their agenda by addressing the second agenda item.

b. Map 25, Lot 16 LRR1

Two Acre Island

Heirs of Carl J. Goodwin c/o Elaine Wormwood

3.

Requesting a variance for lot area and setbacks to reconstruct a seasonal dwelling on a non-conforming lot.

Chairman Schaefer referenced the Raymond Land Use Ordinance and read the four criteria into the record that must be met to grant a variance. The following is an excerpt from the ordinance:

B. Powers and Duties

1. In addition to the power granted by 30 M.R.S.A., Section 4963(2), the Board of Appeals shall have the following authority:
 - a. Subject to the provisions of this Ordinance, to hear and decide appeals from orders, decisions, determinations or interpretations made by the Code Enforcement Officer;
 - b. Subject to the provisions of this Ordinance, to hear and grant or deny applications for variances from the terms of the Land Use Ordinance. A variance may be granted for lot areas, lot coverage by structure, and setbacks. A variance shall not be granted to permit a use or structure otherwise prohibited, except for non-conforming uses, structures and lots as described in Subsection d. below. A variance can only be granted where undue hardship is proven. Undue hardship is defined to mean:
 - 1) That the land in question cannot yield a reasonable return unless the variance is granted;
 - 2) That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
 - 3) That the granting of a variance will not change the essential character of the locality;
 - 4) That the hardship is not the result of action taken by the applicant or a prior owner;
 - 5) Permitted variances run with the land and thus pass from one owner of a property to the next.

MOTION: moved by Schaefer and seconded by Leavitt that numbers 2 and 3 of the hardship criteria could be met.
Vote: 3/0.

MOTION: moved by Lingwood and seconded by Schaefer that hardship number 1 “reasonable return on the land” could not be made unless the variance is granted.
Vote: 3/0.

MOTION: moved by Leavitt and seconded by Lingwood that the applicant met hardship criteria 4 as the hardship was not the result of action taken by the appellant or current owner, but the result of natural events.
Vote: 3/0.

Conditions of approval were discussed:

- Revisit moving structure back as far as practical
- Prior to permit evidence of appropriate septic designs and certification by licensed soils evaluator for what already is there
- permit needs to conform to design consistent with old one- consistent with size, shape, dimensions
- construction to begin within 6 months and completed in 12

MOTION: moved by Schaefer and seconded by Lingwood to grant the variance from the Land Use Ordinance requirements for the Town Of Raymond for lot area and size in order to reconstruct a seasonal dwelling on a non conforming based on the findings presented and subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant will provide evidence of full compliance with the current state and local plumbing codes, rules, and regulations including all subsurface wastewater rules that are applicable and gain approval from a state licensed soil evaluator for what is in existence at the site.
2. The new structure is to be sited as far back from the water as deemed practical.
3. The new building permit will be fully consistent in size, shape, and dimensions with the prior structure.
4. This approval will expire if the work or change permitted by the variance is not begun within six (6) months and substantially completed within twelve (12) months of the date of approval.

Vote: 3/0.

5. Adjournment.

MOTION: moved by Schaefer and seconded by Leavitt to adjourn at 10:04 pm.

Vote 3/0.

Karen G. Strout

Recording Secretary