

BOARD OF ZONING APPEALS
TUESDAY JANUARY 26, 2010
These minutes are not verbatim

MEMBERS PRESENT: Fred Jay Meyer, (Chair), Dennis Keeler, Jonathan Berry (Associate), Willie Audet, Stan Given, Jim Thibodeau, Don Russell (Associate)

Mr. Meyer stated we have a new board member. Mr. Thibodeau said it was Mr. Don Russell.

Meeting opens 6:40pm

Mr. Meyer announces Don Russell as an associate board member. Mr. Meyer proceeded with the administrative items. September Minutes are approved. Mr. Meyer would like to make minor changes to the October minutes.

All applications appear to be complete. Mr. Meyer suggested the Norway application be moved to the end.

1) Odette Galli- Is requesting Conditional Use approval under Section 6.2b to add an extension at 16 Ayers Court. Parcel U16-046, zoned "RA".

Ms. Odette Galli presents the new drawings for her balcony well within the setbacks as requested from the last meeting.

Mr. Meyer opens public comment. Public comment closed.

Mr. Thibodeau asked that the new drawing was dated December 15?

Ms. Galli answers yes and also said the CEO was out to the property and had included a statement in your packets.

Mr. Russell said he followed the previous meeting and was aware of the property.

Mr. Given said Ms. Galli provided the information needed.

Mr. Keeler asked the issue was the distance to the property line and has the balcony size changed?

Ms. Galli answered it is the same balcony.

Mr. Keeler stated that you have 11' to the back property line and 11' 7" to the side. This is what we were unable to determine last time.

Mr. Berry said the new drawing satisfies our concerns.

Mr. Meyer said this was our concern from the last meeting and they appear to be satisfied.

Mr. Given motions to approve the application.

Mr. Audet seconds the motion.

All in favor. Vote is unanimous.

2) Aaron & Rose Splint - Are requesting Conditional Use approval under Section 6.2b to add an addition at 6 Tidewater Cove. Parcel U01-188 zoned "RA".

Rose Splint and Liz Newman, the architect, present the plans. Ms. Newman has handed out the proposed new drawing. Her understanding from the last meeting was the rear addition and work in the back was approved as shown. In the front the set back was 9'. She discussed this change of dimension with Al and Justin.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Berry stated the new drawings satisfy the board concerns they had previously.

Mr. Keeler asked where the road was and Ms. Newman answers him.

Mr. Keeler asked what is new?

Ms. Newman said the old drawing was 9'9" to the front porch and was requested to change it to 10'.

Mr. Keeler asked that is a new part of the house?

Ms. Newman answered it is replacing a structure that was out to the same length.

Mr. Keeler asked what else was new and Ms. Newman said the rear has an addition that was approved last meeting.

Mr. Keeler asked the only issue we had last time was the less than 10'?

Ms. Newman answered yes.

Mr. Keeler said that is a tight 10'.

Mr. Thibodeau asked about the R.O.W. and who owned the 15' R.O.W.

Ms. Newman answered it must belong to the town.

Mr. Thibodeau asked if a surveyor was going to be in charge of laying out the property because you have given yourself 10' 0" for the setback. Will you lay it out or will you have a surveyor lay it out, so you don't have a problem? A contractor could build it an inch or 2 over and create a problem. There is no room for error. Are there lines for the property marked?

Ms. Newman said she understood and said it is measured from the center of the road.

Mr. Thibodeau asked Mr. Brown if there are no property markers how comfortable with the permit process that they will lay this out and not go over the setback.

Mr. Brown answered there is no reason that they can't do it. He would be hesitant to say no they wouldn't be able to. He can't say for certain.

Mr. Thibodeau said there is no room for error and he meets the requirement.

Mr. Audet asked Mr. Brown when he is called for inspection to measure how he verifies it.

Mr. Brown said he starts from the structure and he has not been out to this site or he would say more accurately how he would. He would reverify where the easement is and go by what's on the plan.

Mr. Audet asked that you would take a tape measure from the foundation and go out to the other end?

Mr. Brown answers yes and that encompassed eaves and overhangs.

Mr. Thibodeau asked when there is lack of property control is this something the applicant can provide themselves?

Mr. Brown answers generally yes.

Mr. Berry asked that there is nothing to say where that R.O.W. begins?

Ms. Newman said the understanding she had from Mr. Farris is the R. O. W. starts at the center of the road.

This is where Ms. Newman had taken her measurements.

Mr. Berry said the drawing meets the setback. It is the applicant's responsibility to supply the measurements.

Mr. Audet said that's assuming the road is laid out exactly where it supposed to be.

Mr. Thibodeau said his survey department laugh at him if he were to take that same representations and use it to layout a building and cautioned the applicant to use this

measurement and then you would be back in front of us.

Mr. Russell said he is familiar with using the center line and would not do it.

Mr. Berry said the fines are thousands of dollars.

Mr. Audet explains to the applicant about mislocated dwelling.

Ms. Newman explained her discussion with Mr. Farris that there was a structure in the front was that we could meet the same setback the old structure had. That was the original design we were here a couple months ago for your review. She said she measured carefully and followed the existing structure.

Mr. Meyer said any expansion is limited to the 10' setback and there is no room for error and you needed to be careful.

Ms. Newman asked why the squaring off didn't apply for the previous structure.

Mr. Meyer said there was a stoop there and now you are expanding what was there before. It is an enlargement and limited to 10' of the property line.

Mr. Keeler motions to approve the application in strict conformance with plans submitted and in compliance with all setback requirements.

Mr. Audet seconds the motions.

All in favor. Vote is Unanimous.

3) Safe Housing Associates – representing Bayshore Real Estate- Is requesting Conditional Use approval under Section 6.2b to add a dormer at 5 Reg Roc Rd, Parcel U01-151 zoned "RA".

Mr. Rick Sanborn -Safe Housing Assoc. Mr. Sanborn has provided a mortgage survey. The last time he made the assumption the fence was on the boundary line. The fence is actually on the neighbor's property. Instead of the 10' he thought he had he had 8'. Mr. Sanborn has moved the dormer in an additional 6". They had it 18" in on the original application. Now they have moved it in an additional 6" in on both ends. The deck on the back they originally asked for an 11' deck and we moved it back 2' and have a 9' deck to meet the setback.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Audet asked about drawing 1. The measurement of 18'6" is from the edge of your structure to the neighbors?

Mr. Sanborn answers yes.

Mr. Audet said the neighbor's house is not on the plan and how was this measured?

Mr. Sanborn answered with a tape measure. It 18'6" and he spoke with Mr. Brown about this and Mr. Brown could measure it if he feels it needs to be.

Mr. Keeler asked from the edge of the existing house is 18'6" and by moving the dormer in you would have 20'6"?

Mr. Sanborn answered yes.

Mr. Keeler reviews the measurement of the proposed deck. It is 10' away from the property line?

Mr. Sanborn answered yes and said he spoke with Mr. Bowman and the line is dead on.

Mr. Keeler asked about the measurement from the last meeting showing the 18' 6" from the back of your building to the neighbor. That line is at an angle.

Mr. Sanborn said this is not the right drawing.

Mr. Meyer said the measurement is from the roof overhang and Mr. Sanborn answered there is no overhang.

Mr. Keeler motions to approve the application for a dormer and deck, in strict compliance with plans submitted.

Mr. Given seconds the motion.

All in favor. Vote is unanimous.

4) Kathleen and Zbigniew Kurlanski - Are requesting a hearing to appeal a decision of the Code Enforcement Officer regarding parking in an unpaved area outside of the parking area at Portland Yacht Club, 40 Old Power House Rd, Parcel U16-083, zoned "RA

Mr. Meyer has to recuse himself from this item and he asked if anyone was for here the appeal?

Mr. Russell wanted to speak about it being an abutter.

Mr. Keeler said one thing left open was to discuss the tabling this until when. The applicant asked to table until April and the original application was September.

Mr. Keeler asked about tabling the application and for how long.

Mr. Given said he didn't know why the application was tabled for so long other than someone who gave written testimony was out of the country and wouldn't be back until April.

Mr. Keeler said we don't know if she is out of the country or where she is. One attorney has an affidavit and the other expressed interest and to cross examine her and not rely on the affidavit.

Mr. Russell would like to give something in writing prior to him being on the board as an abutter to the PYC. The application is entirely reasonable and he has facts that could substantiate that.

Mr. Keeler said as a board member you must be unbiased.

Mr. Russell said he asked Carol Kloth that before being appointed he wanted to make sure that he could testify on behalf of the Portland Yacht Club.

Mr. Audet said that Mr. Russell hasn't read any of the applications yet. Being a direct abutter you should recuse yourself.

Mr. Keeler explains to Mr. Russell and said he would seek guidelines.

Mr. Thibodeau asked that the board move to discuss this later.

Mr. Berry said this raises a number of issues. One, this appeal is quite contentious. Our primary concern is should we table this and until what date? Mr. Berry asked the town's attorney about receiving email objections from neighbors and an abutter. He said we could receive them but, if the applicants object we need to continue proceeding to give them an opportunity to invite that person and if the person who emailed us some objection and opts not to appear than we not opt to consider that, because the applicant is being denied due process.

There was an affidavit and the person is not here; we should accept that. One other point I would like to make is the attorneys to consult with each other. Have them come into the town office and review the record and make sure everything they want recorded is presented to us. With all the emails and months that have gone by Mr. Berry can't attest

that he has a complete record.

Mr. Keeler said Mr. Berry has a good point. Mr. Keeler said their questions tonight are: when should they table to and what conditions and messages to relay back? Make it clear about the tabling time frame and maybe contact the town's attorney for review.

Mr. Russell asked if he should resign.

Mr. Keeler said it may not be necessary and he didn't want to deprive Mr. Russell the right to speak in front of the board. We don't want to do anything to fuel the fire. This is why he should seek guidance from the town's attorney. The board can discuss it at the next meeting.

Mr. Plouffe has chosen to recuse himself from this dispute.

We made a commitment to table but until when? Do we want counsel for the board?

The board agreed to table until April.

Mr. Given said he is in favor of this but to have a time line and motion to table until April.

Mr. Thibodeau seconds the motion.

Vote is unanimous.

Mr. Keeler said next is a the full and complete record to the board and would the board be granting another tabling?

Mr. Audet asked if there is a time frame on tabling.

Mr. Keeler answered not if it is for good cause.

Mr. Berry said he is no longer comfortable with the information he has and would like to have the material submitted reviewed and one or both parties bare the expense.

Mr. Keeler is sure the board doesn't need a motion for this. He said we can table until April and should we retain counsel?

Mr. Berry added and imposed additional fees.

Mr. Keeler said we haven't done this in the past I don't know if we can ask for additional fees. Mr. Keeler asked if the board wants counsel?

Mr. Given would feel comfortable having someone advising the board.

Mr. Thibodeau said he will recuse himself because he knows Jim Levis. He hopes the board has quorum.

5) Norway Savings Bank-Is Appealing a Decision of the CEO and/or requesting approvals for a Conditional Use under Section 8.3 for a sign and an 8.4 Variance for the front setback at 266 U.S. RT1, Parcel U58-010-A1, zoned, "BP".

Mr. Nick Morrill representing the bank and Mr. Brian Shibles is the Senior VP of Norway Savings Bank and the CFO. Lee Allen is from N.E. Civil Technical for questions like dimensions and traffic flow should be directed to him. Jack Clifford represents the current owners, Alliance Energy.

Mr. Morrill agrees the board should start its consideration with the administrative appeal first. Mr. Morrill describes the variance granted in 1990 as exhibit B, this variance allowed construction of a canopy. Mr. Farris' decision is that Norway Savings Bank cannot rely upon that existing variance to construct its proposed improvements as a branch bank. He believes Mr. Farris' decision is a misinterpretation of the variance. He describes some history of the property and reviews the variance Mobil Oil received in 1990; 4' front setback for the proposed canopy where the 80' minimum is required.

The board granted the variance to erect a canopy over the gas pumps within the setbacks. The variance was recorded in the Registry of Deeds and is Exhibit E in the packet. The issue Mr. Farris raised is what a canopy is. And, a canopy is different than what we are proposing.

There is no definition of canopy in the ordinance. It may be defined as a structure in 2.169 in the definition of structure.

The canopy was added to protect patrons. Section 2.27 in the ordinance is for shelter. A canopy is a structure or building. We should be able to use this variance to build the bank. The proposed bank would not go to the 4' that that the canopy is situated at. The bank will be more conforming to the ordinance than the current use.

Mr. Meyer opens public comment.

Mr. Jack Clifford references the pump islands nearest to RT 1 are 22' from the front line. The definition of structure applies to both of these and are located well within the 80' setback.

The town was allowing structures, the pump islands, to be placed within the setback areas.

Public comment closed.

Mr. Brown references exhibit C item #2. Mr. Brown's thoughts are the board at this time was to allow a canopy and their thought was not considered a building.

Mr. Morrill feels the board would have chosen more explicit language if it was limited to a canopy.

We are asking for the reinterpretation of the variance and they think they were identifying the structure or building approved and not limiting it.

Mr. Berry asked is there a decision that has been rendered? He asked if they applied for a permit, or are they asking the board to reinterpret the variance?

Mr. Morrill answered they are asking the board to interpret Mr. Farris' reading of the variance.

Mr. Berry said we don't have a decision; we don't have authority to advise what the variance might say under certain circumstances and then tell Mr. Farris what his decision will have to be.

Mr. Morrill said the planner said we need to seek the opinion of Mr. Farris and if he issued an adverse opinion we would not need to go to the zoning board.

Mr. Meyer asked Mr. Brown if Mr. Farris had made a decision in this email.

Mr. Brown said he thinks the email is adequate.

Mr. Berry references the email dated Dec 23. He is having a difficult time seeing what decision was made. Mr. Berry asked what decision was made in this email and to identify it?

Mr. Morrill answered his interpretation of the variance. The planning board would not allow the new building because of the proposed setback. The planning board showed a 30 ft front setback. I asked Mr. Farris to issue an opinion which he said we could not rely on the existing variance to build our project. This is what he gave me and he would issue a decision in which we could appeal.

Mr. Berry said he didn't see in this email an actual decision that Mr. Farris has rendered.

Mr. Thibodeau said he thinks what Mr. Farris is saying is we should confirm what the variance granted for the canopy created a building footprint. Therefore a decision should be rendered that confirms that a variance created a building footprint and the canopy

could be enclosed for the construction of a building. That's what the email is saying. This is what Mr. Plouffe's letter is stating the board can do.

Mr. Audet said it appears Mr. Farris has given a decision. In his last paragraph it says you can appeal this decision.

Mr. Berry said to ask Mr. Farris to discern the intent of a former Board of Appeals and predict what another Board of Appeals may or may not do, is not his decision. His job description is to review the material for the specific issues for the applicant and for him to be asked to interpret what decisions were made years ago meant and asked the board to interpret the status now.

Mr. Audet said he thinks a canopy is a structure.

Mr. Thibodeau asked the applicant to show him where the canopy is now and where the proposed build would be, and about overhangs.

Mr. Morrill said there is a change with an overhang in the front of 5'.

Mr. Thibodeau said with the proposed plan the building is entirely within the side setback.

Mr. Lee Allen said the planning dept. has the right to reduce setbacks by 50%. We are asking for a reduction on the side setback for the canopy down to 12½' instead of the 25' for coverage over the two lanes.

The plans submitted have been altered.

Mr. Thibodeau said you have made a representation that the new building is more conforming, but how?

Mr. Morrill said it would be the north side of the building.

Mr. Thibodeau said it would be hard tonight without having the lot coverage issue answered it would be difficult for him to make a decision without this question being answered. In the future he would like these questions answered. Then he asked Mr. Brown if a bank was an allowed use? Mr. Brown answered yes. Mr. Thibodeau asked Mr. Brown if a gas station was an allowed use? Mr. Brown was not certain.

Mr. Meyer said he remembered a change of use was approved earlier.

Mr. Clifford said in 2006 there was a use change.

Mr. Audet questions the response from Mr. Plouffe regarding the email from Mr. Plouffe; he says it's Mr. Farris' decision. Mr. Plouffe is telling him to give them a permit or take it up with the board.

Mr. Berry said that whatever it is we have or don't have in front of us that may or may not have been considered back when the original variance was granted that's controlling our decision. And the permitting process on plans that are not before us now.

Mr. Meyer said there are two things: Section 8.2 allows an appeal of a decision made by the building inspector. Mr. Farris refers to it as a decision. It's hard for me to find it in that email.

Mr. Berry said Mr. Farris receives 100 emails a day and I don't believe an informal email requesting a review of records or an opinion of what a former board meant.

Mr. Morrill said he asked Mr. Farris for a decision he could appeal. We met with him and he put together this email he thought we could appeal.

Mr. Berry said our jurisdiction is created by statute and there is either something for us to review or not. He is coming down on there hasn't been a final decision.

Mr. Berry said he wasn't sure if a motion was appropriate at all.

Mr. Audet would like to consult with Mr. Plouffe.

Mr. Berry refers to the Bixby application.

Mr. Given asked if Mr. Berry doesn't think Mr. Farris' letter was a decision regarding the building footprint of the canopy.

Mr. Berry said there is still no decision. What decision of Mr. Farris are we to review?

Mr. Meyer asked: if we grant the appeal, you would have no need for the variance?

Mr. Morrill answered correct.

Mr. Meyer said we could wait until Feb. until we can find out what Mr. Farris' decision is?

Mr. Thibodeau asked about the easement and whether 80' setback starts from the edge of the easement. He asked can the setback run from the easement area and comply with the ordinance.

Mr. Morrill reviews the plan with Mr. Thibodeau and said we are 130' back.

Mr. Thibodeau said if there is legal means of using this easement we should explore that. The board reviews Exhibit B.

Mr. Meyer asked about Mr. Farris' letter in which he refers to relief for a possible delay caused by the Planning Board request for a letter from the town's attorney. Was this an alternative avenue explored by the Planning Board, to get an opinion from the attorney?

Mr. Morrill said Mr. Farris said he didn't want to speculate what the variance meant. He could have told the Planning Board there was no issue but he played it safe and opted not do this.

Mr. Morrill said this is his decision.

Mr. Clifford said he spoke with Mr. Farris and he said had not received an appeal from Mr. Morrill on his decision.

Mr. Morrill said when Mr. Clifford called him and asked about the appeal of Mr. Farris' decision; Mr. Morrill told Mr. Farris he delivered his appeal to Ellen Planner who put it on a shelf. Then he delivered his other applications to Mr. Farris and told Mr. Farris he had delivered the appeal to the town clerk, this appeal substantiates this was a decision.

Mr. Given asked if the new building was going to built in the easement.

Mr. Morrill answers no.

Mr. Given said the easement says it granted permission to construct the canopy in the R.O.W.

Mr. Thibodeau said he would like to move forward and Mr. Farris had made a decision.

Mr. Given agrees and he thinks Mr. Farris made a decision and the decision was for the board to decide.

Mr. Russell agrees to move forward.

Mr. Audet is convinced it is a structure.

Mr. Berry would be most comfortable to table this and have the question answered about Mr. Plouffe's letter of Jan 13. after Mr. Farris' email on Dec 23.

Mr. Morrill said when Mr. Farris realized I submitted an administrative appeal. This is when he solicited the opinion from Mr. Plouffe. He forwarded me the email stating Nick Morrill did file an administrative appeal. This might explain the additional emails from Mr. Plouffe.

Mr. Berry said only one of the emails made it into our packet. We don't have the jurisdiction to do this.

Mr. Meyer said he is troubled by Mr. Plouffe's decision but he is willing to move forward with this.

Mr. Thibodeau motions to determine that Mr. Farris issued an appealable decision, the applicants appealed properly, and the appeal is ripe for decision.

Mr. Given seconded the motion.

Mr. Meyer thinks we have enough to decide this on the merits.

Mr. Thibodeau said maybe we should table it and get advice and get an opinion on the question of the easement and the setback.

Mr. Morrill states we urge you to rule on the appeal and not the setback areas.

Mr. Thibodeau is concerned about the intent of the canopy. He didn't think the intent meant 4 walls and a building. He would feel more comfortable with the front lot line beginning at the easement and asked if the board could get an opinion from counsel.

Mr. Russell suggested moving forward.

Mr. Morrill said there is nothing in it stating what the canopy is, it is a shelter.

Mr. Berry said the variance was to erect a canopy. It couldn't be anything other than this. We don't issue advisory opinions.

Mr. Audet said if we granted a variance for a deck and the next owner wants to enclose it.

Mr. Berry said he doesn't think they can move on this.

Mr. Thibodeau said we should vote.

Mr. Given agrees, it is a structure and likes Mr. Thibodeau's easements question, and would vote to move forward.

The board votes and Mr. Berry is a voting member.

2 in favor, 3 opposed. The motion fails.

We have a decision that it was not ripe to appeal.

Mr. Thibodeau moves to table this application and feels Mr. Farris has made a decision but wants an advisory opinion to see about the property line. He is uncomfortable that any canopy can become a building and feels there is missing information.

Mr. Meyer states it appears that we may have made an erroneous decision. As he understands it, the motion which failed was for a determination that there was a final decision from Mr. Farris which was ripe to appeal, but that motion failed. That determination is inconsistent with Mr. Thibodeau's suggestion that Mr. Farris did make an appealable decision. Mr. Meyer asks Mr. Thibodeau about his position on ripeness to appeal and the meaning of the prior motion.

Mr. Thibodeau indicates that he feels there was an appealable decision, but the board lacks sufficient information to decide the appeal tonight and should table the matter to a hearing at which Mr. Farris can provide additional information regarding his decision, and also to obtain an opinion from the town's counsel on the setback running from the easement line.

Mr. Berry moves to strike the last vote, because it was based upon an apparent mistake on the part of one or more board members.

Mr. Given seconds the motion.

Unanimous vote to strike the prior vote.

Mr. Thibodeau moves to find that the appeal is ripe, but that there is information which is missing and therefore the board's consideration of the appeal should be tabled to the next hearing.

Mr. Berry seconds the motion.

Unanimous vote in favor of the motion to find that the appeal is ripe, but that the appeal should be tabled to the next hearing to receive additional information. Mr. Meyer asks

Mr. Morrill whether the board should defer consideration of the applicant's variance until after the board has acted upon the appeal.

After conferring with his client, Mr. Morrill requests that the variance application be tabled until the next meeting.

Part 2 of the application is the Conditional Use for the sign.

Mr. Morrill adds an addition, exhibit 1 regarding the easement. This easement is a condition on Norway Saving Bank closing on the purchase and sales transaction. Mr. Morrill's application is to alter the current Mobil sign. Change the face of the sign and the post as shown on exhibit A. Also on exhibit E.1 the last page. Mr. Morrill reviews the history of the property. The lease describes the sign location of the old sign and the new location of the sign relocated in 1978. The location of the sign being off site was not addressed. There was no evidence in the town's file for permits but records show upgrades of the signs. We wanted to buy the easement area from MMC in fee which would resolve some of the issues we are discussing. Maine Medical Center will not agree to sell us the property but agreed to grant us this amended easement.

So we can have this easement for Norway Savings Bank's sign. It will be as described on exhibit A.

It will be located as described in the lease, as exhibit D.

The sign is 100 ft back from US RT 1.

Mr. Thibodeau asked where the sign is and the proposed site.

Mr. Morrill answered where it is now?

Mr. Thibodeau asked about the size of the sign. Is it bigger?

Mr. Allen answered no.

Mr. Thibodeau asked Mr. Brown about the requirements for the sign and were they met?

Mr. Brown answered he believed Mr. Farris reviewed the sign and it meets requirements.

Mr. Thibodeau said the board could make this part of the approval that the sign be in compliance with the ordinance.

Mr. Given asked that the sign would be in the same footprint?

Mr. Allen answered yes.

Mr. Meyer asked Mr. Brown if the sign was nonconforming?

Mr. Brown answered that there was no original sign permit. He didn't have the paperwork for the upgrades in 1984 or 1992 and he assumes that it is nonconforming.

Mr. Meyer states under 5.11G you will need site plan approval?

Mr. Thibodeau asked Mr. Brown if he required structural foundation plans for the foundations of the signs or stamped engineer plans?

Mr. Brown answered yes; Mr. Farris usually reviews the plans for construction as well as design.

Mr. Thibodeau said he asked this because it has to be safe for the general public, and if a sign like this blew down it would hurt someone.

Mr. Thibodeau motions to approve the application.

Mr. Audet seconds the motion.

Mr. Meyer nominates Mr. Russell as voting member.

All in favor. Vote is unanimous.

