

Board of Appeals
October 22nd 2012 – 7:00 pm
Town Office Conference Room



ORIGINAL

MINUTES

CALL TO ORDER

Chairman Mark Hyland called the meeting to order at 7:00 pm with Members Holly Bubier, Roger Ducharme, Mark Hyland, Richard Carlson, Joseph Radziszewski, and Alternate Bryan McNulty present. Bryan McNulty will not be a voting member this evening; however he is still able to participate and ask questions.

MINUTES

August 6th, 2012

- Member Richard Carlson makes a motion to approve the minutes of August 6th, 2012, seconded by Vice Chairman Joseph Radziszewski. No discussion.
Vote: YES – 5 NO – 0

August 27th 2012

- Member Richard Carlson makes a motion to approve the minutes of August 27th, 2012, seconded by Member Bryan McNulty. No Discussion.
Vote: YES – 3 NO – 0

APPEALS

Shoreland Variance Appeal: Elizabeth & David Carr – Map 35, Lot 8.

- **Member Roger Ducharme makes a motion that jurisdiction has been established, seconded by Vice Chairman Joseph Radziszewski. No Discussion.**
Vote: YES – 5 NO – 0
- **Member Roger Ducharme makes a motion that Elizabeth and David Carr have standing as the owners of Map 35, Lot 8, seconded by Vice Chairman Joseph Radziszewski. No Discussion.**
Vote: YES – 5 NO – 0
- **Code Enforcement Officer Nick Adams, and Appellants Elizabeth and David Carr are present.**
- **Appellant** – Elizabeth and David Carr are seeking a variance to keep a camper on their lot by moving it from its current location 68 feet from the water, to 100 feet from the water, placing it one foot from the side property line. They purchased the lot sixteen years ago and have had a camper on in since then, until someone made an anonymous complaint to the Code Enforcement Office this year. Elizabeth and David received a Permit by Rule from DEP for a small pad, septic tank, and bath house that currently exist on the lot. They invested \$16,000 into these various upgrades because it was their understanding that the camper could stay on the lot year round if it had a septic system. If the pad is moved it will be impossible to meet any of the

side setbacks since the lot is only fifty feet wide. Elizabeth feels that if they are not granted the variance the lot will be worthless. There is also two 10 foot by 8 foot decks on the lot that go next to the camper.

- **Code Enforcement Officer** – Nick Adams informs the board that a DEP Permit by Rule is not a shoreland zoning permit, which is required by town ordinance. A Permit by Rule is simply an additional permit required by DEP for any soil disturbances made within 75 feet of the high water mark. Currently, the camper has been removed and the decks remain on the lot. Nick has told them they are allowed to leave them until a final decision has been made.
- **Opposing Statements**
 - Abutter John Burdick informs the board that the camper was actually on his property since they purchased it. In 2010 they moved it; however it is still over the line. The septic system they put in is actually on the property line. John also points out that they are also the owners of the lot across the street from the one in question, and this lot was only meant to serve as a water front access for that lot.
 - Chairman Mark Hyland asks the appellant if they are also the owner of the lot across the street. Mrs. Carr informs him that it is owned by her sister, who rents it out to pay the mortgage. Mrs. Carr and her sister both own the lot in question and intend to use it as the back lot is continuously rented out.
 - Jen Flint is the daughter of the owner previous to Elizabeth and David Carr. She notes that her father had a camper on the lot only during construction of the camp. After its completion there were a couple of occasions when a guest would stay a few nights on the lot. The camp that he constructed has since burnt down.
 - Anne Gagne is the abutter on the opposite side. She agrees with what John Burdick has stated, and reminds the board that when the Carr's went to the planning board for the bath house it was stated twice that the camper could not stay on the lot for more than 120 days in a year.
- **Supporting Statements**
 - Clifford Anderson is a land owner within 500 feet of the Carr's. He believes that they were somewhat misled by the previous owner, as far as where the property lines were. Mr. Anderson believes that they have the right to enjoy the property that they own, and hopes that the town continues to allow them to do that.
- **Chairman Mark Hyland closes the public hearing at 7:58 pm.**
- **Vice Chairman Joseph Radziszewski makes a motion to approve the variance appeal made by Elizabeth and David Carr allowing them a one foot set back from one side line, and an eleven foot set back from the right of way, seconded by Member Roger Ducharme.** No discussion.
Vote: YES – 0 NO – 5 Appeal is denied
- **Findings of Fact:**
 - Elizabeth and David Carr are the appellant and owners of Map 35, Lot 8 with the address of 58 Upper Range Drive, provided copy of deed.
 - Limited Residential Zoning
 - The applicant proposed adding a mobile RV for camping, and two decks to the property.

- Application for appeal was filed on September 27th, 2012. Public hearing for the appeal was held on October 22nd, 2012.
- 504.5, 507.1i, 507.2, 508.27A, 508.27B, 508.27E were all used in the decision making process.
- Setback requirements for limited residential zoning are 100 feet from pond, 50 feet from the road, and 40 feet from the sides.
- Variance request consists of a request for a 1 foot setback for one side, 25 foot setback for the other, and an 11 foot set back from the road.
- The land is being used as a camping lot.
- The neighborhood consists of varying 50' wide and 100' wide conforming and non conforming lots.
- There is currently a septic system, bath house, camping trailer, and two decks on the lot.
- Bath house was moved to comply with the 100 foot set back from the water, and the appellant was hoping to receive a variance to do the same with the RV.
- The proposed structure wouldn't meet performance standards for side, and front setbacks.
- The land in question would yield a reasonable return, because it is useable and has a bath house with a septic system.
- The need for a variance is due to the unique circumstances of the property.
- Granting the variance would not alter the character of the locality.
- The hardship is not the result of action taken by applicant or previous owner.
- Based on the above facts and conclusions, the Poland Board of Appeals has voted to deny the application. This ruling can be appealed in superior court within 45 days of the board's decision.

Shoreland Variance Appeal: Gwen & Georges Gendron – Map 43, Lot 1

- **Vice Chairman Joseph Radziszewski makes a motion that Jurisdiction has been established, seconded by Member Roger Ducharme.** Based on section 504.3 a. 1. b.
Vote: YES – 5 NO – 0
- **Member Roger Ducharme makes a motion that Gwen and Georges Gendron have standing as the owners of Map 43, Lot 1, seconded by Richard Carlson.** No discussion.
Vote: YES – 5 NO – 0
- **Code Enforcement Officer Nick Adams and appellants Gwen and George Gendron are present.**
- **Appellants** – In July of 2012 someone made complaints regarding numerous violations on the Gendron's property. Complaints were made for a portable dog ramp and riprap, both of which were installed to prevent erosion that was taking place. The violation that they are in front of the board for is a 96 square foot deck sitting at the top of the stairs coming from the water. It currently sits somewhere between zero and five feet from the water. In August 2012 CEO Nick Adams informed the appellants that the accessory structure was in violation and would need to be removed. The Gendron's informed him that they were permitted by former CEO Arthur Dunlop. After reviewing the file CEO Nick Adams was unable to find any permit for the structure.

The Gendron's believe that this structure was approved verbally by Art Dunlop, and they are in front of the board seeking a setback variance to now keep the structure in place.

- **CEO Nick Adams** – Nick is somewhat sympathetic that they have been misled, however he stresses that everyone should obtain written permission for any project. He also reminds the board that the only violation in question is the small deck at the top of the stairs. The rock and dog ramp are not currently in front of the board.
- **Opposing Statements** – Dan Murphy is an abutting land owner. He believes that the Gendron's are the biggest abusers of shoreland zoning on the pond. In the 23 years he has been an abutter of their lot, there has never been any erosion issues. Mr. Murphy states that the Gendron's do what they want until they are caught, and then they ask for permission.
 - Gwen Gendron responds with an explanation for the recent erosion. It is being caused by their dogs constantly digging into the bank. This was the reason they had put the planks down for them to climb up.
- **Chairman Mark Hyland closes the public hearing at 9:30 pm.**
- **Board Deliberation** – The board is in agreement that this structure should have not been permitted at the time it was built because it does not meet the zoning requirements.
- **Member Roger Ducharme makes a motion to approve the variance appeal submitted by Gwen and Georges Gendron of Map 43, Lot 1 for an 8 foot by 10 foot deck, seconded by Vice Chair Joseph Radziszewski. No Discussion.**

Vote: YES – 0 NO – 5 Appeal is denied

- **Findings of Fact:**
 - Georges and Gwen Gendron are the applicant and owners of the property located at Map 43, Lot 1 with the address of 3 Birch Drive, provided copy of deed.
 - Limited Residential zoning with 0.29 acres.
 - The applicant proposes to keep an 8' x 10' deck adjacent to the water on their lot.
 - Application was submitted October 2nd, 2012. Public hearing was held October 22nd, 2012.
 - Chapter 5, section 504.3 was used in the decision making process.
 - A 100 foot setback is required by the ordinance.
 - Variance request consists of a zero foot set back from the lake for an 8 by 10 foot deck.
 - The neighborhood consists of homes between 60-70 feet from the water.
 - Appellants were seeking the variance for safety reasons.
 - The land in question can yield a reasonable return.
 - There are no unique circumstances to the property, as it is similar to those in the neighborhood.
 - Proposed use would alter the character of the locality.
 - The hardship is the result of the action taken by the applicant because they constructed the deck without a permit.
 - Based on the above facts and conclusions the Poland Board of Appeals has voted to deny the application. This ruling can be appealed in Superior Court within 45 days of the board's decision.

OTHER BUSINESS

None.

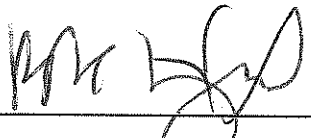
ADJOURNMENT

Member Richard Carlson makes a motion to adjourn at 9:47 pm, seconded by Vice Chairman Joseph Radziszewski. No Discussion.


Vote: YES – 5 NO – 0

Recorded by Alex Sirois

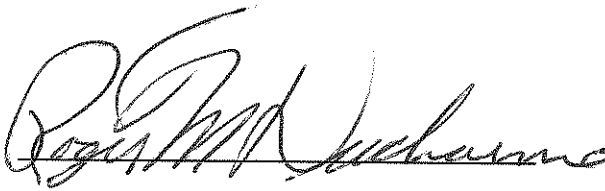
Date Approved:
Board of Appeals



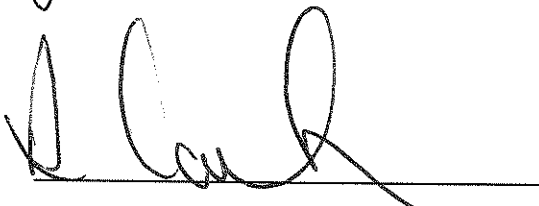
Mark Hyland, Chairman



Joseph Radziszewski Jr., Vice Chairman



Roger Ducharme, Secretary



Richard Carlson, Member



Holly Bubler, Member

Bryan McNulty, Alternate Member