

Poland Zoning Board of Appeals Meeting

December 7, 2015 – 7:00 pm

Town Office Conference Room

MINUTES

CALL TO ORDER

Chairman Mark Hyland calls the meeting to order at 7:00 PM with members Gerard Bowes, Richard Carlson, and Erland Torrey present.

Public Attendance: Code Enforcement Officer Nick Adams, Record Secretary Alex Sirois, Jeffrey and Susan Cooper.

MINUTES

July 20, 2015

- Member Richard Carlson makes a motion to accept the minutes for July 20, 2015 as presented, seconded by Vice Chairman Gerard Bowes. No discussion.

Vote: YES – 3 NO – 0 ABSTAINED – 1 (E. Torrey, absent)

COMMUNICATIONS

None

APPEALS

Jeffrey and Susan Cooper, Variance Appeal – Map 8, Lot 76

- **Appellants Jeffrey and Susan Cooper are present.**
- **Standing: Member Erland Torrey makes a motion that the Coopers have standing as the owners of 126 Hackett Mills Road by presentation of a warranty deed, seconded by Vice Chairman Gerard Bowes. No discussion.**
Vote: YES – 4 NO – 0
- **Jurisdiction: Member Erland Torrey makes a motion that the Board has jurisdiction to hear the appeal, seconded by Vice Chairman Gerard Bowes. No discussion.**
Vote: YES – 4 NO – 0
- **Appellants:** Jeffrey and Susan Cooper are before the board with a variance appeal request. They are in the process of trying to sell their home at 126 Hackett Mills Road. During the process it was realized that the house was built too close to the road, encroaching on the minimum front setback required of fifty feet (50'). Before they can sell the house they will need to bring it into compliance. The Coopers were first time home builders and worked very closely with the Code Enforcement Officer Art Dunlap. Eventually at one point during construction Mr. Dunlap came to the site and said they would be unable to build a previously permitted farmers porch as planned, due to the house being too close to the road. He did allow them to instead install a set of manufactured steps at the front door.
 - Vice Chairman Gerard Bowes is curious why the no action letter issued by CEO Art Dunlap does not solve the problem.
 - According to Mr. Cooper the buyer's agent was not comfortable with the no action letter, since it was possible the town could go back on that decision.
 - CEO Nick Adams also adds that a Code Enforcement Officer has no right to issue a no action letter; it would need to come directly from the Board of Selectmen. The Board of Appeals is the only Board able to issue a variance.

- Chairman Mark Hyland asks the Coopers if their house currently meets the side setback requirements of forty feet (40') and it does.
 - Chairman Mark Hyland asks how far the house is from the brook at the back of the lot.
 - According to Mr. Cooper it is approximately one hundred and eighty feet (180').
 - The contractor who located the foundation may have been confused as to the location of the right of way.
 - Chairman Mark Hyland asks if CEO Art Dunlap had inspected the forms prior to pouring the foundation. He did and it was signed off on.
 - Vice Chairman Gerard Bowes asks at what point they were notified that there may be an issue with the set back.
 - The Coopers are unsure when or how Mr. Dunlop discovered the problem. They do know it was after the foundation was poured.
 - Vice Chairman Gerard Bowes asks CEO Nick Adams when he will measure setbacks to a structure.
 - CEO Nick Adams does not measure setbacks only building size. He is not a surveyor therefore cannot verify the building location.
 - **Code Enforcement Officer:** CEO Nick Adams informs the Board that at the time of construction the set back from Worthley Brook and any wetland complex associated with it would have been two hundred and fifty feet (250'). At the time the lot was zoned Resource Protection (RP). There is an exception that would allow a single family home in the Resource Protection (RP) zone with a reduced set back of one hundred and fifty feet (150'). The structure appears to be more than one hundred and fifty feet (150') from Worthley Brook. In 2013 Worthley Brook was rezoned to Stream Protection Two (SP2) which changed it to a seventy-five foot (75') setback with a two hundred and fifty foot (250') buffer.
 - The Planning Board would be allowed to grant a reduced set back of twenty feet (20') from the road for a new application.
 - **Public Comment:** None
 - **Vice Chairman Gerard Bowes makes a motion to close the public hearing at 7:42 PM, seconded by Member Erland Torrey.** No discussion.
- Vote: YES – 4 NO – 0
- **Board Deliberation:**
 - Vice Chairman Gerard Bowes is fine with granting the variance, and thinks the variance should allow space for a future owner to construct a farmer's porch. He asks Mr. Cooper if the building permit fee included the porch, and if they were ever refunded that portion of the permit.
 - They were not issued a refund for that portion of the permit.
 - Member Erland Torrey believes that the house as it sits fits the general character of the neighborhood very well and that granting the variance will not change that.
 - The Board determines that the structure is located in the Shoreland Zone.
 - Chairman Mark Hyland asks if the application has been sent to the Maine Department of Environmental Protection (MDEP), and it has.
 - MDEP Has no problem with the variance since it is for the front setback and not the stream or wetland.
 - The Board does not believe the property can grant a reasonable return without the granting of a variance.
 - The Board discusses the distance required for a farmer's porch, in order to give the smallest variance as possible. It is decided that a variance of fifteen feet (15') reducing the setback to thirty-five feet (35') would be acceptable.

- **Vice Chairman Gerard Bowes makes a motion to approve the variance request of fifteen feet (15') for Jeffrey and Susan Cooper, reducing the required front setback to thirty-five feet (35'), seconded by Member Erland Torrey. No discussion.**

Vote: YES – 4 NO – 0 **VARIANCE IS GRANTED**

- **Finding of Facts:**

- The applicants and owners of the property are Jeffrey and Susan Cooper as demonstrated by a submitted warranty deed.
- The property is located at 126 Hackett Mills Road, Poland, Maine and it is in the Rural Residential - two (R2) zone. It is identified as Assessor's Map #8, Lot #76.
- Applicant is requesting a fifteen foot (15') reduction in the front set back from fifty feet (50') to thirty-five feet (35').
- The variance requested is from chapter five (5) section 507.2.D.6(a) and section 507.2.G.6(a) of the Comprehensive Land Use Code (CLUC).
- The appeal application was submitted on November 18, 2015. A public hearing was held on December 7, 2015.
- The land is currently being used for residential purposes, which fits the character of the neighborhood. The lot was and currently is a non conforming lot of record.
- A building permit for the house and farmers porch was granted by the Code Enforcement Officer in May of 2006. The house was constructed based on that building permit. At the time the setback requirements from the stream and road were both unable to be met, however the house was still permitted.
- The house was built roughly one hundred and ninety feet (190') from Worthley Brook and sixty-seven feet (67') from Hackett Mills Road. The structure is not at least fifty feet (50') from the road right of way. Since its construction, the shoreland zoning (SLZ) set back was reduced to seventy-five feet (75') from the normal high water line (NHWL) of the stream or seventy-five feet (75') from the upland edge of the wetland complex. The structure currently complies with the shoreland zoning setback, but does not comply with the principle structure front set back requirements of the CLUC.

- **Conclusion:**

- The board concludes that the structure or use would meet the performance standards of this Code except for the specific provision the front setback to the road, which has created the nonconformity and from which relief is sought.
- The applicant has proved to the Board that strict application of the terms of this Code would result in undue hardship. If the variance is not granted the applicants would be unable to sell the home.
- The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. A number of the lots in the neighborhood are larger than the lot in question; also the way the thread of the brook cuts the back of the property line reducing the setback.
- Granting of a variance will not alter the essential character of the locality. The house fits the character of the neighborhood and no testimony was heard that it would negatively affect the neighborhood. Pictures of the neighborhood provided to the Board showed the house and grounds were similar to the other houses in the neighborhood.
- The hardship is not the result of action taken by the applicant. They were diligent and followed guidance from the town's Code Enforcement Officer. The house was located inaccurately by the site contractor.
- No other feasible alternative to a variance is available to the petitioner; moving the house is not a possibility. Granting of the variance will not unreasonably adversely affect the natural environment.

- **Decision:** Based on the above findings of fact and conclusions, the Town of Poland Board of Appeals voted to unanimously to approve the application for a variance appeal. A zoning variance approval certificate will need to

be recorded with the Androscoggin Registry of Deeds within ninety (90) days. This decision can be appealed in the Superior Court within forty-five (45) days.

- **Member Erland Torrey makes a motion to accept the written findings of fact for Jeffrey and Susan Cooper, Variance Appeal – Map 8, Lot 76, seconded by Member Richard Carlson.** No discussion.

Vote: YES – 4 NO – 0

OTHER BUSINESS

None

ADJOURNMENT

Member Richard Carlson makes a motion to adjourn at 8:35 PM, seconded by Vice Chairman Gerard Bowes. No discussion.

Vote: YES – 4 NO – 0

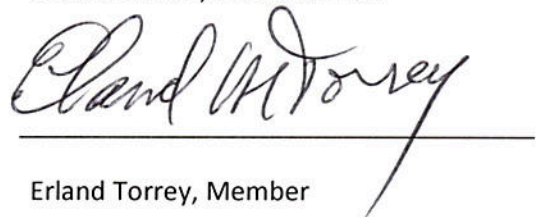
Recorded by Alex Sirois

Approved on:



Mark Hyland, Chairman

Richard Carlson, Member

Gerard Bowes, Vice Chairman

Erland Torrey, Member