

**Poland Zoning Board of Appeals Meeting
March 28, 2016 – 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, Recording Secretary Alex Sirois, Stuart Davis, Maria Parisi, Michelle Carver, Cindy Dan, Amanda White, Geraldine Thompson, David W. Merrill

COMMUNICATIONS

None

APPEALS

Maria Parisi, Variance Appeal – Map 42, Lot 4

- **Appellant Maria Parisi is present.**
- **Jurisdiction: Vice Chairman Gerard Bowes makes a motion that the Board has jurisdiction to hear the appeal, seconded by member Richard Carlson. No discussion.**
Vote: YES – 4 NO – 0
- **Standing: Vice Chairman Gerard Bowes makes a motion that Maria Parisi has standing as the owner of 920 Empire Road by presentation of a warranty deed and a building permit from 2002, seconded by member Richard Carlson. No discussion.**
Vote: YES – 4 NO – 0
- **Appellants:** Maria Parisi is before the board accompanied by Stuart Davis of Davis Land Surveying with a variance appeal request. The property was purchased in 2001. In 2002 Maria decided to do some renovations, going through the proper avenues with the current Code Enforcement Officer at the time, gathering the necessary permits and being granted a Certificate of Occupancy. Now she no longer needs that large of a home, and started looking to sell her home. A buyer had been found for the home, but the buyer's bank did a mortgage inspection on the home and failed it for not meeting required setbacks, particularly the garage. This creates a problem for Maria as she is no longer able to sell her house. Therefore Maria Parisi is asking for a variance reduction from twenty-five feet (25') to 3.8 feet (3.8').
 - Chairman Mark Hyland questions Mr. Davis whether this was the first survey this neighborhood has ever had.
 - Mr. Davis says the land was originally surveyed sometime around the 1820s, but has not been surveyed since. He explains that the lot is the shape that it is because there were two wells that were desired to be kept within the property boundaries.
 - It is pointed out that the driveway isn't even fully on Ms. Parisi's property, but the house next door does have its own driveway, not a shared driveway.
 - Vice Chairman Gerard Bowes asked the applicant if a plot plan was submitted when she applied for the building permit, and what the reference points were.
 - Ms. Parisi used the trees in the front yard, a tree to the left of the property (behind the empty house), a pin in a lilac bush.
 - Member Gerard Bowes asks CEO Nicholas Adams what the setbacks were at the time of construction.

- CEO Adams cites a twenty-five foot setback from the sideline for a principal structure, and twenty foot for an accessory. The permit issued at the time states a forty foot setback from the side and rear lines, but he believes that to be an error.
- Member Gerard Bowes asks if CEO at the time ever did a final inspection.
 - The applicant states that many inspections were done, and the only correction CEO Dunlop wanted was a four foot reduction in the width during the initial planning stage.
- **Code Enforcement Officer:** CEO Nick Adams wonders if measurements were taken from the road by mistake, but it is clear to him that there is not a twenty-five foot setback from the sideline. It is clear to CEO Adams that the setback was not met. He doesn't believe that there is twenty-five feet between the two houses now.
- **Public Comment:**
 - Unidentified audience member states that he lives across the street from applicant. His house is also up for sale and is only two feet from the sideline of his property. He wonders if the Board would make him move his house. Chairman Hyland points out that his house was there before zoning ordinances were created, so it is a different situation. Audience member states he feels that Ms. Parisi was "led astray" by the previous Code Enforcement Officer.
 - Real Estate Broker Michelle Carver points out how confusing the original deed is, which may be why the original sketch plan is incorrect. She also says that if the Board were to make the applicant tear down the garage that it would create extreme hardship because her mortgage would be worth more than her house is worth.
- **Chairman Mark Hyland closed the public hearing at 7:40 PM**
- **Board Deliberation:**
 - Member Gerard Bowes believes that the appellant's case meets the spirit of the Comprehensive Land Use Code 304.2.B.2.d.
 - Believes a variance is in order because she followed all proper steps in 2002 to put this garage on her land.
 - Suggests a condition on the variance that the future owner would not be allowed to do any modifications or construction within the current setback of where the structure is.
 - Chairman Mark Hyland believes that if a variance is granted it is only granted for the structure as it is.
 - Member Gerard Bowes maintains that he thinks a variance is in order because the appellant went through the correct avenues, and it was clearly a mistake that the garage was allowed to be built.
 - Chairman Mark Hyland mentioned that during the last variance they granted it for 15 feet (15'), and he didn't think the Board should ever approve any less than that. He wonders at which point a variance becomes unreasonable.
 - Chairman Hyland understands the confusion, but doesn't believe all the blame should be placed on the previous Code Enforcement Officer. Part of the blame lies in the lack of a survey by the appellant and the town not requiring surveys at the time.
 - Finds two points of the CLUC 304.2.B.2.d.(2) troubling.
 - CLUC 304.2.B.2.d.(2).(a): The need for the variance is due to the unique circumstances of the property, and not to be the general conditions of the neighborhood. Chairman Hyland states that testimony has been heard that the general conditions of the neighborhood are very similar to the appellant's situation.
 - CLUC 304.2.B.2.d.(2).(b): The granting of the variance will not produce an undesirable change in the character of the neighborhood or will not unnecessarily or detrimentally affect the use or market value of abutting properties. Chairman Hyland believes the vacant house next door is proof of an effect on the market value of abutting properties,

but it cannot be proven that the garage being built too close to property lines was the cause.

- Member Gerard Bowes points out another section of CLUC 304.2.B.2.d.(2).(d): No other feasible alternative to a variance is available to the petitioner. He does not believe tearing down the garage is a feasible alternative.
- Chairman Hyland also reads CLUC 304.2.B.2.d.(2).(c): the practical difficulty is not the result of action taken by the petitioner or a prior owner. He says the appellant did what most people would consider due diligence, but the fact is that the sketch plan was not correct and a survey was never done.
- Member Erland Torrey agrees with Member Gerard Bowes, and believes Maria Parisi acted in good faith.
- Member Richard Carlson wonders if approving this variance would cause other people to go before the Board of Appeals expecting the same approval.

- **Member Gerard Bowes makes a motion to approve the variance request to reduce the required setback from twenty-five feet (25') to 3.8 feet (3.8') for Maria Parisi of 920 Empire Rd., seconded by Member Erland Torrey.**

No discussion.

Vote: YES – 3 (Bowes, Torrey, & Carlson) NO – 1 (Hyland) **VARIANCE IS GRANTED**

- **Finding of Facts:**

- The applicant and owner of the property is Maria Parisi as demonstrated by a submitted warranty deed.
- The property is located at 920 Empire Road, Poland, Maine and it is in the Village Two District zone. It is identified as Assessor's Map #42, Lot #4, and contains 1.52 acres.
- Applicant constructed a two car attached garage that was not located twenty-five feet from the sideline.
- The appeal application was submitted on March 11, 2016. A public hearing was held on March 28, 2016.
- The variance requested is from chapter five (5) section 507.2.A.6 of the Comprehensive Land Use Code (CLUC).
- Maria Parisi applied for a relevant building permit for the garage and an additional space in between the garage and the dwelling on April 25, 2002. That permit, which included a sketch plan, was signed by the current Code Enforcement Officer at the time. Before the garage was constructed the house was considered a conforming structure, but with the addition has made it a nonconforming structure.
- A survey of the plot of the lot was not completed at that time. Since then, a potential purchaser of the lot was denied a loan due to the nonconforming setback, and subsequently Maria Parisi had the lot surveyed which confirmed that it didn't meet the setback.
- Many of the lot lines date from the early 1800s, and that's a current theme throughout the neighborhood.
- In conclusion the board is granting a setback reduction from twenty-five feet (25') to 3.8 feet (3.8').

- **Conclusion:**

- The proposed structure or use would meet the performance standards of the code except for the specific provision which has created the nonconformity from which relief is sought. The proposed structure would meet the performance standards of the code but for the fact it's located too close to the property line. This is the one item which the variance is required from and which relief is sought from.
- Strict application of the code to the petitioner and the petitioner's property would cause a practical difficulty and the following conditions exist:
- The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. There are some very similar conditions in the neighborhood; though this property is unique due to a jog in the sideline to allow for both wells that belong to that property to stay with that property. As a result, the house next door is only a few feet from the edge of the property line. This property, however, is grandfathered due to its age.

- Granting of a variance will not alter the essential character of the locality nor the use or market value of abutting properties. The house next door has been vacant for six years but there is no proof that it is due to the location of the garage. Having heard from other neighbors in the area about their properties also being close to the property lines, it doesn't appear that this garage is negatively affecting these properties.
 - The hardship is not the result of action taken by the applicant. She followed all proper procedures. It should have been obvious to the previous Code Enforcement Officer that the setbacks were not met.
 - The practical difficulty is a result of inadequate property survey, and confusion from the Code Enforcement Officer as to what the actual setback was.
 - No other feasible alternative to a variance is available to the petitioner; members of the board did not believe making the garage smaller was a feasible alternative. Granting of the variance will not unreasonably adversely affect the natural environment.
 - The structure of the land area in which the variance is sought is not located in whole or in part in Shoreland Zoning area or in the hundred year floodplain.
 - **Decision:** Based on the above findings of fact and conclusions, the Town of Poland Board of Appeals voted to approve the application for a variance. 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 decision of the Board based on the findings of facts for Variance Appeal – Map 42, Lot 4, seconded by Member Richard Carlson.** No discussion.
- Vote: YES – 3 (Torrey, Bowes, Carlson) NO – 0 ABSTAINED- 1 (Hyland)

MINUTES

December 7, 2015

- Member Gerard Bowes makes a motion to accept the minutes for December 7, 2015 as presented, seconded by Vice Chairman Erland Torrey. No discussion.
- Vote: YES – 4 NO – 0

OTHER BUSINESS

Chairman Mark Hyland questions surveyor Stuart Davis and Code Enforcement Officer Nick Adams on the implications of this decision. He questions whether the town can come up with some sort of consent agreement with property owners to avoid having to grant these variance requests.

- Stuart Davis suggested a “no action” letter from the Code Enforcement Officer.
- Code Enforcement Officer Nicholas Adams explains that only the Board of Selectmen would be able to issue those types of orders, but it would be just as easy for the following Board to revoke it. Only a court order or variance appeal would stay with the property forever. He mentions another statute in which a different type of variance could be granted for single family homes, called setback reductions.
- Member Erland Torrey asked for this information to be forwarded to the Board.

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 Jessica Leighton

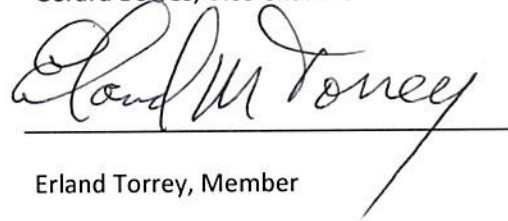
Approved on August 8, 2016:

A handwritten signature in black ink, appearing to read 'Mark Hyland', written over a horizontal line.

Mark Hyland, Chairman

A handwritten signature in black ink, appearing to read 'Gerard Bowes', written over a horizontal line.

Gerard Bowes, Vice Chairman

A handwritten signature in black ink, appearing to read 'Erland Torrey', written over a horizontal line.

Erland Torrey, Member

Richard Carlson, Member