Harpswell Planning Board Meeting
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Attendance: James Henderson-Chairman, John Papacosma-Vice-Chairman, Howard Nannen, Don Rogers, Robert White-Associate, Dorothy D. Carrier-Associate, Tony Dater-Planner, Karen O'Connell-Recording Secretary.

The meeting had been advertised in the Times Record and was videotaped, broadcast live on Harpswell TV. and recorded. The audio tape recorder did not record first portion of meeting due to technical error. Chairman Henderson called the meeting to order at 6:30 introduced above members and staff and appointed Dorothy D.Carrier as official voting Associate member for this meeting. Henderson led the pledge of allegiance.

Minutes- The minutes of March 20th Meeting were approved. - **Motion by Nannen and Carrier seconded, Carried 5-0.**

Larry Crooker, Estes Lobster House, Inc. Site Plan Review (Change of Use) Shoreland Business, Tax Map 18-108, Harpswell Neck Road (Rt. 123), Harpswell (Return from 1-16-02 meeting) Henderson reported that there was Fax communication from Mr. Crooker's representative requesting this item be indefinitely postponed. Mr. Belanger has asked that the item be removed from the agenda as they will be working on design for septic system. **Henderson suggested the item should be removed completely from the agenda and indefinitely postponed - Motion by Papacosma and Nannen seconded, Carried 5-0.** Henderson indicated the Board would entertain a new proposal when submitted.

Planning Board By-Laws - Henderson distributed revised planning board by-laws as amended at the February 20th meeting with a change made to Article 5, Section 7, giving more flexibility to reconsider matters before the Board.
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Limits Of Board Communications Re: Applications - Henderson advised Board members that based on a recent meeting of Selectmen with the Town Attorney, and resulting memo that: there should be no discussion of applications or site visits by board members outside of the public forum; Board members need to hear all information fresh as a group so that no one is to receive information outside the public forum; Board members may discuss procedures but should not discuss content of an applicant's proposal until they meet as a group; and the Board may attend a formal site visit as a group. Rogers clarified that a public notice would take place in regard to the group site visit, and that independent Board member visits are not allowed. White asked how the Board could make decisions without seeing the land. Henderson clarified that: it is more important now that applications be complete, with all information and plans for review; the Board's main function is to determine setbacks and conformity with setbacks; and site visits as a formal board group are still feasible.

Minimum Requirements For Applications Considered by Planning Board - Henderson asked the Board to discuss the issue of the allowable time limit to discuss a proposal, indicating at the last meeting the board was unclear as to whether proposals need to have action within 100 days of the initial hearing or otherwise be off the agenda. Papacosma proposed that the 100 day clock starts when a matter is first on the agenda. Nannen asked to clarify handling of incomplete applications. White asked to clarify lead time necessary to to be considered for agenda. Henderson proposed the board draft a policy statement based on information from Jeremy Hatch. Henderson added that for sake of efficiency, fairness to applicants and the public, a 21 day lead time needs to be set and that the Board should not accept incomplete applications for the agenda. The planner could make a recommendation as to completeness and suggest to Board "not recommended for action" due to incompleteness. Nannen asked to consider some discretion by the Board to go forward when a minor matter is incomplete and even if not recommended for action. Henderson asked the board to review the minimum requirements for discussion at next meeting. Henderson stated he would get additional information on draft policy to Board members for review.

Helene K. Chase, represented by James Hoare, Reconstruction of Non Conforming Structure, Shoreland Residential, Tax Map 18-78, 1832 Harpswell Neck Rd., Harpswell - Henderson first asked if it was acceptable that this matter be handled out of agenda order. The board was asked to review notes by Planner Tony Dater. Henderson reminded the board that the focus was to determine if the location of structures allows setbacks to be met to the greatest possible extent. Applicant Presentation - Mr. Hoare representing applicant Chase presented the plans for reconstruction of a nonconforming residence. Hoare indicated the residence was located on a small lot of 5,200 square feet, referred to boundary survey and plot plan depicting location of existing house, paved drive, shed and bulkhead along with septic location, and existing well at rear of plot. Nannen asked about existing setbacks from property lines. Hoare indicated: the lot is generally 50 feet wide but is narrower towards the front (road side);setback from back line is 9.25 feet; sideline setbacks are 6.92 and 3.58 feet; reconstruction will take place on the existing structure corner pins with some

net reduction in total footprint for all buildings: some of the square footage of existing shed and bulk head (to be removed) is proposed to be used in porch areas; however setbacks for stairs are less than existing. Hoare indicated there is little malleability on this small lot. Henderson confirmed the plan was to demolish and reconstruct, with Hoare confirming it as the most economical. Papacosma asked location of old and planned septic. Hoare replied new septic would be same general area as existing septic (size indeterminate) and that new septic design is by Mr. Al Frick, and the subject of much correspondence with the Town. Henderson reminded the board that the major focus is on setback requirements. Abutter Comments Eves - Mrs. James Eves, abutter on the South side stated she is not that concerned about the size of the house but had other concerns. Eves indicated that the history of the building was conversion of garage to dwelling by previous owner. Eves concerns related to a cesspool for septic sewage surfacing and overrunning /washing out her land, lack of room for a well or a septic, setback of septic from her property line or possibly on her land, and installation of previous septic without permit.. Henderson asked Mrs Eves if it would be acceptable if they could install an adequate septic system. Eves stated she doubts adequate septic can be constructed because of slope/topography. Henderson responded that these appear to be an accumulation of "old sins". White indicated that this was an example of a failed septic system and state rules allow a replacement system to go in. Henderson summed up saying the applicant will need to show that they will take care of problems and improve the situation. Eves responded that: they will have to do a powerful build up (height of the septic field).. Dater offered that the approval of the septic is a matter for the Codes Office. Eves repeated concerns of wash out by the septic and stated she takes a dim view of that. Abutter Comment - Barker- Mr. George Barker an abutter to the North, stated that as a four year neighbor he wholeheartedly supports the efforts of the Chases and believes the Chases will do nothing offensive to neighbors. Nannen asked the applicant about feasibility for changes on the septic. Hoare responded that the septic design is a "done deal" subject to many previous reviews by Town Code's Officers - Webster, Mayo, and Adams. Hoare referenced a September 4, 2001 letter from Mr. Mayo responding to Mr. Frick's July 9 letter and addressing concerns raised by Codes Officer We bster, with the result the septic chambers are to be moved one foot to the West to achieve a 60 foot distance from the well across the road. Henderson responded saying this matter is primarily up to the Codes Office. Hoare indicated the design flow is for a three bedroom residence. Mr. Henderson indicated the board might consider reserving the right to place a condition on this application that there be (1) both a smaller septic as well as (2) a properly constructed system that does not leak. Papacosma asked about the drainage design on the plot plan. Hoare indicated issues of topography, with slope of the area's adjoining lots naturally draining towards the Eves property as well as to rear and towards road. Because of the topography, the septic plan is to pump up to a raised /mounded system, and to install a new rock wall near the Eves property. Abutter comment- Eves - Eves continued to question the adequacy of drainage and the accuracy of plot plan drawings property lines stating her survey map shows lines are North 38 degrees West and boundary pins were removed. Hoare responded that the replacement septic should be a superior system properly directing surface runoff and that the stone wall could have panels to control other seepage. Rogers questioned whether raising/mounding the septic field could cause more run off. Henderson indicated there could be a condition that the rock wall be constructed as impervious. Henderson suggested Eves work out boundary agreement through a talk with neighbors or get a lawyer to assist with the boundary. Henderson indicated that the presumption by the board is that an applicant is presenting accurate information. If there is a boundary conflict, it would be a civil matter and it would not be settled by the Planning Board. Henderson asked to return focus to the setback issues. Discussion Henderson noted that the North corner of the plan for the house (a white area on a small blue drawing) and a Southerly porch were additional intrusions into existing setbacks. Hoare responded that the porches and decks use square footage from a bulk head and shed(to be demolished) which he thought could be traded/utilized. He indicated only the stairs go closer to the setback. Henderson referred to a March 6, 2000 letter from Codes Officer Doug Webster regarding the matter of trade offs. He summarized that each setback is a separate issue and that only the Board of Appeals has authority to reduce a setback. Henderson concluded that it appears that we cannot allow any more non conformity or additional encroachment on setbacks. There was a discussion on lot coverage in which Hoare indicated that total impervious coverage had been reduced from 27% to 26% and building height was 24 feet and 3 inches . White asked measurement point for height and Hoare responded from average grade. Nannen asked about square footage and Hoare reported the net increase was 159 square feet on the footprint. White questioned the reduction of impervious surface with footprint increase and Hoare responded the driveway was now smaller. Henderson indicated the basic issue and the Board's authority on this matter related to setbacks. Dater indicated that ordinance 11.1 of Basic Land Use applied,(20% lot coverage).. Papacosma noted ordinance 10.3.1 applies regarding expansions which are allowed if it does not increase non conformity of the structure; however creating the full rectangle footprint (with decks and porches) increases the nonconformity. Henderson indicated the application could be denied based on the rectangle increasing nonconformity and the stairs are also at issue intruding further into setback and suggested the matter may need to go to Board of Appeals. Nannen referenced note # 6 on applicant's survey indicates apparent boundary overlap and dispute and the Board discussed option that application be subject to a condition on boundary agreement deeds. Dater referenced Basic Land Use Ordinance 10.3.1 which relates to shortest distance from setbacks. The building appears to be outside of Shoreland zone but the septic falls within the zone. The board discussed the ordinances which relate to any expansion toward property lines or road that reduces the shortest existing distance. Hoare indicated he had viewed the current setbacks as a set of intersecting lines and thought that he could work within those lines. Henderson asked Hoare if he could move the building away from the back boundary line to achieve conformity but Hoare noted there are side line

issues with the narrowing at front of lot. Motion **-Henderson made a motion to deny the application based on the proposed setbacks not meeting the requirements of the ordinance to the greatest practical extent because of the expansions into rectangular areas (of north porch and south east porch) which increase the non conformity in areas reserved as setbacks** . Discussion.- Papacosma asked what the issue was as long as applicant was not increasing the shortest non conforming setback. Dater responded indicating it is "a greatest practica l extent" issue; a letter of the law and spirit of the law issue involving an extremely small lot. Nannen asked again about the possibility of the applicant expanding toward the road to accommodate the building plan. The Board discussed the potential to move the entire structure forward 11 feet to address the issue of nonconformity and suggested possibly the building could be narrowed a few inches. Applicant Comment - Chase. Mr. William Chase stated he had been working on this project for three years working with two Codes Officers who had said the squaring off of the corner (forming the rectangular footprint shape) to add porches was fine. Mr. Chase indicated he had spent considerable funds working on the application and asked that the board consider his proposal from a humanistic standpoint. He would like to have a livable house. Henderson suggested that the applicant does have the option of taking the matter to the Board of Appeals which might mean another three weeks of effort. Henderson indicated he thinks it is best that the applicant take the issues to the Board of Appeals because the Planning Board is following previous decisions by the Appeals Board. Dater indicated that the reason the item is before the Planning Board is because of the 50% rebuild rule. Code Enforcement Officers do not have the decision making authority on rebuilding over 50% of property value. These matters must be referred to the Planning Board. (Henderson noted that though plugged in and turned on, the tape recorder at the table had not been recording up to this point, However video recording was taking place in addition to recording secretary) Discussion - A brief discussion took place regarding applicants working with Codes Office as first step. With ongoing ordinance changes Codes Officers are acting in good faith as they work with applicants. Henderson noted the need to follow up with Codes Office to establish advice that can be given to applicants in varying circumstances. Nannen indicated concerns about requests to increase the size of buildings on nonconforming lots, squeezing lot lines, and bigger buildings on very small Lots. In this proposal an expansion of volume is taking place. Nannen stated he has difficulty when proposals push boundaries so far and is inclined not to approve. The applicant was advised that they could still build with the existing footprint and gain more volume, but not expand the footprint toward any setback. The board voted on the above motion and denied the application based on its increasing nonconformity of the setbacks.. **Motion by Henderson and seconded by Nannen - Carried 5-0 (see motion above)**
Henderson noted that because of the time, that item 6 on the agenda, the Lucille Hershenhart application may not be able to be heard this evening but would be placed first on the May meeting agenda.

Kathryn Henry, Approval of Land Use in Shoreland Zone and Reconstruction of Non Conforming Structure, Shoreland Residential , Tax Map 11-20,20 Tyron Rd. Ext. Harpswell - Applicant Presentation- Kathryn Henry presented her proposal to winterize and expand a 1910 cottage to use as a year round home. Henry circulated pictures and used a cardboard model of land contours and building. Henry stated she had been trying to organize a site visit but understood the Board's new position. Henderson indicated the Board is mostly concerned with setbacks. Henry indicated the proposal increases lot coverage from approximately 6 to 18%;wishes to incorporate an existing stone fireplace within the house; septic system was upgraded a year ago within the 75 foot water setback ;expansion is only 30% within the 75 foot water setback (deck); with the majority of the addition beyond the 75 feet. White asked about height of building and the applicant was reminded of 30 foot building height requirement to be measured from the median point of the building which is on a slope. The board indicated it could be a condition that it is not higher than 30 foot as measured from the median height. Abutter Comment - Halloway Malcolm Halloway stated he considers this application a massive overwhelming change on a non confirming property right at the water's edge. He is concerned about runoff from the mounded septic system; first floor square footage that is almost 3 times the current square footage (from 914 to 2214); two and one half baths; loss of forested areas; elevation factors; appearance of more than 20% lot coverage; right of way issues (Tyron Road ends at existing garage within property lines); and overall impact from run off to the water. Henderson indicated the Board will raise these issues with applicants and Henry was asked to respond. Applicant Henry - replied that she is removing an existing drive and will improve landscaping; she pointed out property line; and had calculated lot coverage based on the new design adding buildings behind 75 foot line. White indicated it is a nonconforming lot overall. Henry stated plan to demolish and replace all with exception of fireplace; renovation is not practical; the new square footage will be approximately 2200 up from approximately 900; a failed septic system had been replaced in 2000 as designed by Mr. Newburg. Henderson indicated that the question is to determine if the setback is appropriate to the greatest practical extent. Applicant clarified that the blue cross hatches in the drawings represent the 30% expansion of the original cottage within the 75 foot line of the Shoreland zone and that this deck area is no closer than the current house line. Henderson explained the concern is that this addition is going into a setback area not allowed. Dater indicated per 10.3.1., you can add to buildings, but per the more than 50% of value destruction rule, the planning Board can hold to a more stringent standard. Henry indicated she is not going closer to the water. Dater explained that the 50% rebuild rules allows Planning Board to determine the setback to the greatest practical extent for the entire rebuild. When buildings are destroyed there are fewer options. The board needs to decide in cases of demolition whether to allow any part of a new building beyond the 75 foot line. Discussion - Henderson noted in no case shall a structure be rebuilt to increases its non-conformity, but volume is distinct from

setback rules. Designs are possible with an increase of 30% and yet not increase non conformity. Nannen noted that if a rebuild is less than 50% of value, then the question is can the applicant implement the 30% expansion. Board members indicated this is the same issue as previous agenda items but in this case the setback is from the water. Papacosma indicated that for the new cottage behind the 75 foot mark they have discretion. Dater agreed with Nannen the matter requires a site visit to determine what is feasible to greatest practical extent. Henderson interrupted here to advise the representatives waiting for the Hershenhart application that their item will now probably not be heard this evening but would be first on the agenda for the May meeting. Discussion - Henderson continued that if a proposal is more than 50% demolition, the board needs to consider whether they will allow any new construction not in keeping with the 75 foot setback. If the rebuild is moved back to be conforming to greatest practical extent that would satisfy the Board. The slope of land may be an arguable issue, but it was considered possible the applicant could come back with something fully behind the 75 foot line. Rogers noted that if the chimney is an important item then the applicant can't get behind 75 foot set back. **Motion - Given the Applicants desire to make more than a 50% demolition and reconstruction, the Board finds the current proposal does not meet setback requirements to the greatest practical extent as noted in 10.3.2.1 of Shoreland Zone Ordinance. Henderson motioned and Nannen seconded** . Discussion Nannen stated the Board is bound by both the letter and spirit of the ordinance; the Town needs to reduce the properties that are right on top of the water to eliminate the non conformity. It was explained that the Board can't micro manage how applicants resolve issues. White pointed out the need to watch the amount of impervious surfaces. Nannen indicated the board may be able to entertain a proposal that salvaged a small part of chimney (suggesting a chimney reversal). Dater reminded Henry that maintenance (under 50%) could be done in annual stages. Rogers asked what does it take to be grand fathered. Papacosma clarified that there is room on this lot to build behind the 75 foot line though ledge may be an issue. Applicant Henry asked if they could do continuous repairs to reach goals and was advised to check very carefully on this with Codes as to how much money can be spent without triggering Planing Board review. The applicant asked if the Board could do a site visit because of the contours of the land noting Jeremy Hatch had worked with them and had seemed positive about proposal because of the site issues. The applicant was advised to go back and talk with the Codes Office . **The above motion was withdrawn - Henderson withdraw and Nannen seconded.** Nannen encouraged the applicant to look into alternatives. A motion to continue to the May meeting was made, then withdrawn. **Henderson then moved to continue this item at the June 19 meeting as most convenient to all present. Henderson motion and Nannen seconded Carried 5-0.** In addition at applicants request, a formal board site visit a public meeting, was scheduled for Tuesday April 30 at 4:00 P.M.

Laurie Haggerty and Eleanor French, Reconstruction of Non Conforming Structure, Shoreland Residential, Tax Map 15-143,51 Basin Point Rd.,Harpswell. Applicant presentation - Ms. Haggerty and Ms. French described a shed currently 10.8 by 12.4 feet that is easier to tear down than rehab and noted "any" work puts it over the 50% value criteria. The front corner of the shed is now 2 feet from road right of way (and 15 feet from traveled portion of road). They had received a letter from Tony Dater, Planner suggesting the shed be moved back further from the road and this was acceptable. Dater indicated the lot coverage was 13% and seemed to be beyond the 250 foot Shoreland setback. Nannen confirmed that side setbacks are non conforming but would be in roughly same line. **Carrier suggested a motion to recommended approval with the condition shed be moved 25 feet from road. Rogers Seconded.** Discussion - Dater noted there is also a 30% increase which must be considered and asked if the side setbacks could be met. Haggerty and French agreed they could turn/rotate the shed to increase conformity with sidelines. But Nannen noted by adding 30% to the shed there is an increase in non conformity on side lines. Applicant shared an old subdivision map which indicated they are actually within the 250 foot of Shoreland zone. Dater indicated basic land use which stipulates applicants may only rebuild if they did not expand. Applicants indicated they had been told by Doug Webster, former Codes Officer that the 30% expansion of the shed would be acceptable. The Board noted the issue is the side setbacks. Following a brief discussion about repair and maintenance options, it was recommended that the applicants go to the Code Office about this. Nannen further explained ordinances do allow for normal upkeep, maintenance, repair and renovation not involving expansion, without a permit. Applicants asked about fees being refunded and Henderson suggested they speak with Codes office if they believe there was an error. **Carrier withdrew above motion to approve and Rogers seconded. Motion to deny application as presented as it does not meet the setback requirements to the greatest practical extent as noted in section 10.3.2.1. Papacosma moved and Henderson seconded - Carried 5-0.** Henderson commented that the Board considered that if reconstructed, the shed must be moved back 25 feet but the applicant was not interested in moving unless they could increase the size.

Motion to adjourn - Carrier motion and Henderson seconded - Carried 5-0. The meeting was adjourned at 10:02 PM.

Respectfully Submitted, Karen O'Connell