



Town of Harpswell
Board of Appeals Minutes
August 13, 2014
Approved September 24, 2014

Members Present

Ned Simmons, Chair
Jim Knight
Ellen Lebauer
John Perry
Pat Lawson, Associate Member
Ellen Shillinglaw, Associate Member

Members Absent

Staff Present

William Wells, Code Enforcement Officer
Diane Plourde, Recording Secretary

The Town of Harpswell Board of Appeals meeting, being duly advertised in the Brunswick *Times Record* was called to order at 6:00 PM. The Chair introduced the board members along with Amy Tchao, Town Attorney from Drummond Woodsom.

The Chair appointed Ellen Shillinglaw a full voting member for this meeting.

Old Business: 14-07-01BA – David & Debbie Thomas (Map 47 Lot 63), 31 South Dyers Cove Road, Harpswell – Administrative Appeal of Land Use Permit #14-116 (Map 47 Lot 51)

There was no site visit for this meeting and the Chair noted the issue of timeliness & completeness of filing an appeal was acceptable. The Chair reviewed new information received since the last meeting and a meeting was held on July 29th to compile questions for the Town Attorney.

Ned Douglas, representing the applicant, stated the concern is that the house torn down was used for storage and was never occupied as a dwelling. He said there was never a septic system or water supply on the property. Can this be used for storage and then be used as a dwelling within CFII. They feel the answer is no.

John Cunningham, attorney for Eaton Peabody spoke for Mr. & Mrs. McEwen and said he reviewed the memo answering the questions received from William Wells and he agrees with the answers given. He read from the Shoreland Zoning Ordinance Section 13.5 "*In the CFII District, residential use that is accessory to the principal functionally water-dependent use may be allowed...*" it does not say that no other residential use is not allowed. If the Ordinance is read in another way, if the allowed accessory residential use that is accessory to the commercial use in the CFII Zone is allowed the answer is yes under certain circumstances. It does not say it is the only use within the CFII District.

He stated that in the Table of Uses #15.1 it states "*One and two family residential*" uses is allowed with a permit from the CEO.

Mr. Cunningham explained his interpretation of the Shoreland Zoning Ordinance language *Section 10.4.2 Resumption Prohibited* reading: “A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year or which is superseded by a conforming use may not again be devoted to a non-conforming use. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes for the preceding five (5) year period.” He feels these two sentences do not work well together and that a structure used or maintained as residential use does not have to be lived in during that time period. Also, residential use does not require functioning toilet, septic, or running water.

The Board discussed their interpretations of Section 15.6, Section 10.4.2, Table I Section 15.1 and Commercial Fishing I, Commercial Fishing II.

Ms. Tchao reviewed Sections 15 “Principal structures” and Section 15.1 “One and two family residential, including driveways” and who has the authority to issue or deny permits in the CFI and CFII zones. She said that prior to the language change in CFII in Section 13.5 it was clear that residential use was allowed in CFII even when the property does not border on the water. Changes were made to the ordinance in 2013, but do a prohibitive reading of Section 13.5 saying only accessory residential uses are allowed in CFII does that make sense knowing there are a number of CFII lots in town where there is no capability of having a principal water dependent use.

William Wells, CEO said he spoke with Carol Eyerman, Town Planner and several members of the committee who drafted the section of the ordinance, and that their sole intent was to insure that if one was in CF zone that one can have a residential structure on that property to have two principal uses on one property. Ms. Shillinglaw asked if this legislative intent embodied within the written minutes from the meetings. Terri Sawyer, Deputy Town Administrator said there was an entire package prepared by the Shoreland Zoning Task Force and the intent was to make it easier for commercial fishermen. After reviewing she said that the meetings reviewing Ordinance change was in the fall of 2013 with no specific discussion at any one meeting and since the minutes are summarized so there is not precise language of these changes.

Gary Vincent, resident, indicated that if the legal intent to not allow fisherman to build a house within the CFII zone was brought before the Town Meeting, he feels this would not have been approved. Mr. Knight indicated that if this discussion to bar construction within CFII at Town Meeting, he agreed that this would not have been accepted. He feels that at least 80% of the tax burden in Harpswell is borne by the people who live in CFII. Mr. Simmons suggested the Board review the entire building permit application for Map 47 Lot 51 received April, 30 2014. This is a replacement structure on South Dyers Cove Road. Findings are: Is non-conforming, grandfathered lot, 7,500 square feet with 75feet of road frontage. Existing land use is in dispute but the most recent use is storage whereas in the past it has been used as a dwelling. Present lot coverage is 9%. Mr. Wells said the actual dimensions are conforming to all setbacks save the setback to the road. Mr. Simmons indicated that he is satisfied that the structure as being reconstructed

will not exceed the lot coverage, not impeded on side line setbacks, will be non-conforming with the setbacks from the road.

Mr. Wells gave an overview of the application being appealed, going over the setbacks, height requirements, maximum lot coverage, property lines whereas the non-conforming road frontage is grandfathered. There is a shared well, the septic is a BUSSE system that will be located in the basement and is approved by the State. The description of the permit application is a tear down reconstruction of a non-conforming structure.

Mr. Simmons asked the Board if they agreed that this residential use is a conforming use in the CFII and the project description is a tear down reconstruction of a non-conforming structure with either resumption or introduction of a conforming use as a residential use.

Ms. Tchao summarized the Findings of Fact to read:

1. In Section 13.5 of the Shoreland Zoning Ordinance, the clear language does not limit residential uses to only accessory uses.
2. Table 1 Section 14 of the Shoreland Zoning Ordinance allows under Section #15 "Principal structures and uses" 15.1 "One and two family residential" within CFII is allowed with CEO permit.
3. Many lots within the town in CFII do not have shorefront.
4. The intended language of the Shoreland Zoning Taskforce to allow residential accessory uses two principal CFII lots already used as a functionally water dependent use make it clear that fisherman could have a residential accessory to that use.
5. It was noted by Terri Sawyer that this application went before the Planning Board and jurisdiction was not taken and then the application went to the Code Office for permitting.

Ned Simmons moved seconded by John Perry to deny the appeal and have done a De novo review of the application and instruct the Town Attorney in consultation to draft Findings of Fact. Motion carries 5-0

Consideration of Minutes: July 29, 2014 (Special meeting)

Ned Simmons moved seconded by John Perry to accept the minutes as presented. Motion carries 5-0

Adjournment: Meeting adjourned at 7:30 PM

Respectfully submitted by:

Diane E. Plourde
Recording Secretary