

Town of Harpswell
Board of Appeals Minutes
September 23, 2015
Adopted October 28, 2015

Members Present

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

Members Absent

Staff Present

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 6:30 p.m. by Ned Simmons, Chair. The chair read the agenda, introduced the board members and reviewed the procedures.

Old Business: None

15-09-01BA – Lee Theberge, 1392 Harpswell Islands Road, Orr’s Island, Map 27 Lot 31 – Section 14.2.1 Administrative Appeal

Mr. Theberge gave the Board handouts (see Exhibit A) and read this handout regarding the fish house on Osborn Row.

The Chair reviewed the applicant’s paperwork submission. He asked the Code Enforcement Office for their position. Mr. William Wells, CEO explained how the Code Office strives to abide by the Ordinances and when Mr. Theberge inquired about the alternative toilet, the inquiry was sent to the DEP. The Code Office was told that the alternative toilet required a permit and therefore was not allowed on this property. A letter was sent to Mr. Theberge stating this fact. Discussion continued between the Board and the Code Officers.

Mr. Theberge stated the reason he was seeking the Administrative Appeal was because the recorded variance of 1991 does not state “no plumbing”. Mr. Simmons stated his willingness to have this investigated by the Town Attorney. The Board concurred.

Ned Simmons moved seconded by John Perry that we continue this matter until next month pending advice or attendance from the Town Attorney relative to the 1991 variance. Motion carries 5-0

Other Business: Consideration of Minutes of July 22, 2015

Mr. Simmons noted on page two, under 15-07-02 – Planning Board, “... standing to bring this appeal, the abutters cannot show particularized injury.” He changed the wording to read, “...*standing to bring this appeal. An appellant must show particularized injury in order to have standing.*”

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Mr. Knight noted changes on page two, second paragraph, which reads “Debora Levensailor, member of Planning Board, wanted it to be noted that this should have gone before the Planning Board.” He said this should read, “...wanted it to be noted that *in her opinion*, this should have gone...”.

Also on page two read, “David Chipman, Planning Board Chair spoke to the appeal saying that this should have come before the Planning Board.” He said this should read, “...spoke to the appeal saying that *in his opinion*, this should have come...”

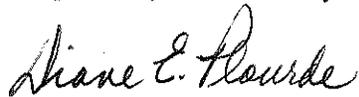
**Ned Simmons moved seconded by Jim Knight to accept the minutes as amended.
Motion carries 5-0**

Consideration of Minutes of July 28, 2015.

**Jim Knight moved seconded by Ned Simmons to accept the minutes as drafted.
Motion carries 4-0 – Ellen Shillinglaw abstained.**

Adjournment: The meeting adjourned at 7:30 PM.

Respectfully submitted by:



Diane E. Plourde
Recording Secretary

Attachments: Exhibit A

To the Town of Harpswell Board of Appeals

I would like to begin by giving you a little history of our fish house and property on Map 27, Lot 31 Osbourne ROW:

On July 16, 1991, I went before the Board of Appeals with an application to build a 20X24 fish house on a 40X40 lot.

At that same meeting Ed Johnson, on an adjoining lot that was the same size, 40X40, applied for a 20X30 fish house. That night he was approved with only one condition, that he could not build a porch.

That same evening, my fish house was denied. The reason was that it was more than 20% lot coverage.

I reapplied for the next meeting August 20, 1991. At this time I was approved for a special exception but there were two conditions. (1) no plumbing in this building and (2) reduce the size of fish house size from 20X24 to 16X24 with an attached 10X6 shed.

The law stated at that time that if you recorded the special exception in the Registry of Deeds in Portland within 30 days it was good for the life of the property. I received my signed Certificate of Variance Approval (CVA) on September 4, 1991 and recorded it with the Registry of Deeds on September 9, 1991.

In Mr. Johnson's application he asked to relocate a 24X24 fish house on his wharf (that, by the way, were both knocked down due to ice a year and a half earlier on January 1, 1990) and to expand to a 20X30 fish house on the shore. As I stated before his expansion of a fish house was approved on July 16, 1991 (without a porch).

My application for a fish house was approved on August 20, 1991 with a decrease in the size of 20X24 to 16X24, with an 8 ft. setback from high water, plus the condition of no plumbing (stated above). Those conditions were not given to Mr. Johnson. I am very, very happy that Mr. Johnson got what he asked for because I think there are way too many rules and regulations on what you can and cannot do with your own property (but this is another matter).

Note: To clarify the two properties similarities, please refer to the third page of your packet for a survey of the properties.

Back then I never gave any thought to discrimination or preferential treatment, but it is obvious to me now that I was treated quite differently than Mr. Johnson was

treated on our adjoining lots of equal size. I was too busy trying to make a living for my family and I never gave the above decisions much thought. But now after reviewing all my paperwork and trying to make my fish house usable for my grandkids and family, and also a recent health scare, I am trying to "square away" all legal matters before I'm gone.

After double checking all of my old paperwork it came to my attention recently that in the meeting minutes of the Board of Appeals dated May 28, 2014 (minutes approved on June 23, 2014) it was stated that I had never applied for a permit for an Alternative Toilet Installation.

The reason I am before you tonight is because on August 13, 2015 I submitted that application for an Alternative Toilet Installation in our fish house. It was denied by Bill Wells on August 26, 2015 and I would like to ask for an Administrative Appeal on his decision.

I have two building permits that I received from the codes office that should be reviewed. The first building permit that I received from Bill Wells dated May 2, 2008 gave me permission to build the fish house per approved plans and RECORDED VARIANCE (please note: I am putting this in capital letters because that is the way it appeared on the building permit). I guess I did not build within the allotted time of one year so I had to reapply for a second building permit. I did so on July 15, 2009 and was given a building permit per approved plans and per RECORDED VARIANCE signed by William Wells. On the last page of this packet you will find a copy of the RECORDED VARIANCE dated September 9, 1991. The only three conditions it states are (1) approving reducing lot size to 40X40, (2) setbacks from high water from 25 ft to 8 ft, (3) reducing lot frontage from 100 ft to 40 ft. I have met all of these conditions and more in building my existing fish house.

Please note the following facts that were given to me by my lawyer:

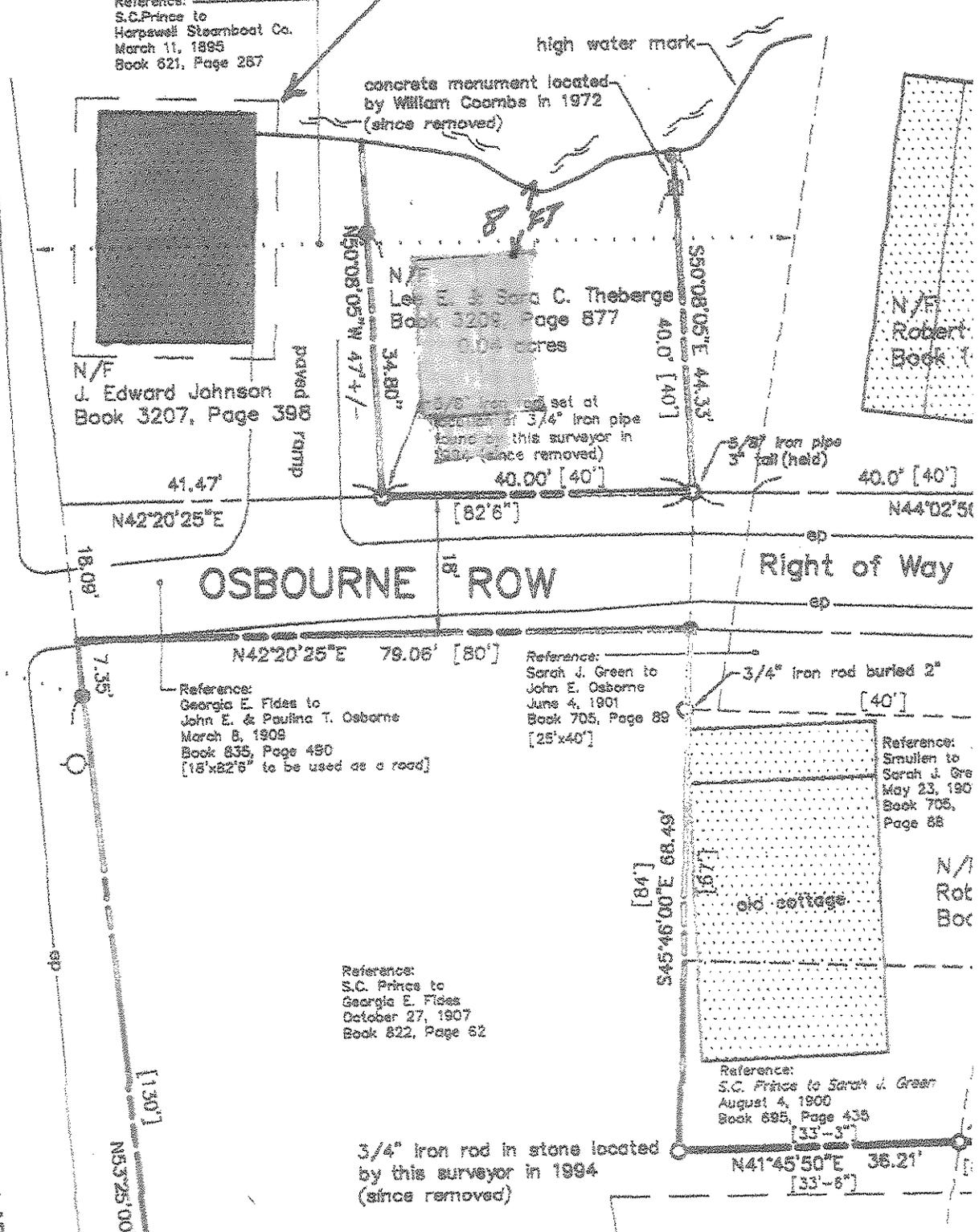
The Notice of Decision issued by the Board of Appeals on August 20, 1991, prior to issuing the CVA, states that there shall be no plumbing in the fish house. However, that requirement was NOT contained in the recorded CVA (please note: the CVA was signed by Chairman Sam Alexander on September 3, 1991 and recorded in the Registry of Deeds in Portland September 9, 1991). As a legal matter, it is our understanding that the recorded CVA, incorporated into the Building Permit, is the only binding document that controls the specific requirements under which my client, Lee Theberge, needed to construct the fish house. Therefore, the Permit (based directly on the recorded CVA and approved plans) does not prohibit him from installing plumbing in the fish house.

HARPSWELL SOUND

NO SETBACK

Reference:
Smullen & Prince to
Francis M. Wallace
October 29, 1898
Book 544, Page 128

Reference:
S.C. Prince to
Harpswell Steamboat Co.
March 11, 1895
Book 621, Page 267



high water mark
concrete monument located
by William Coombs in 1972
(since removed)

N/E
E. & Sara C. Theberge
Book 3208, Page 877
0.04 acres

N/F
J. Edward Johnson
Book 3207, Page 398

N/F
Robert
Book

3/4" iron rod set at
intersection of 3/4" iron pipe
found by this surveyor in
1994 (since removed)

5/8" iron pipe
3" tall (held)

OSBOURNE ROW

Right of Way

Reference:
Georgia E. Fides to
John E. & Paulina T. Osborne
March 8, 1909
Book 835, Page 480
[18'x82'6" to be used as a road]

Reference:
Sarah J. Green to
John E. Osborne
June 4, 1901
Book 705, Page 89
[25'x40']

Reference:
Smullen to
Sarah J. Ore
May 23, 1900
Book 705,
Page 88

Reference:
S.C. Prince to
Georgia E. Fides
October 27, 1907
Book 822, Page 62

Reference:
S.C. Prince to Sarah J. Green
August 4, 1900
Book 695, Page 438
[33'-3"]

3/4" iron rod in stone located
by this surveyor in 1994
(since removed)

9'35"36"E
13.78'

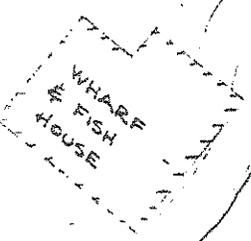
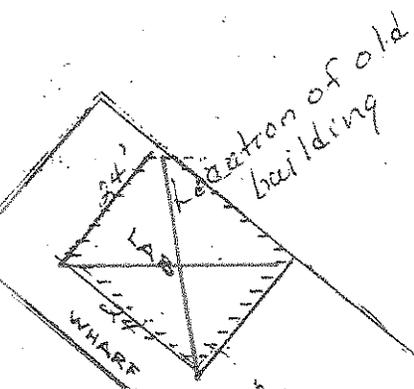
see plan 5a
ME

[130']
N53°25'00"

[84']
S45°46'00"E 68.49'

N41°45'50"E 36.21'
[33'-6"]

MERRYCONEAG SOUND



TOWN LANDING

LOADING RAMP

EDW. JOHNSON

LEE E. & SALLY THEBERGE

N-55°27'-W
45'

40'

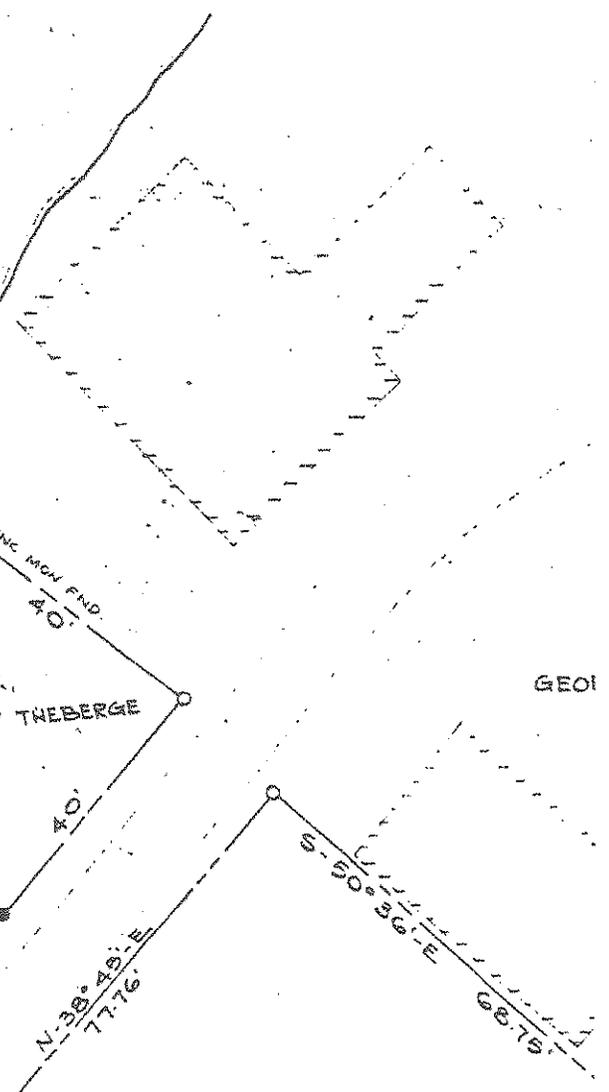
N-38°49'-E
77.76'

N-55°27'-E

CONC. MOW END.
40'

S-50°56'-E
68.79'

GEOI



27/31

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK

MUNICIPALITY OF HARPSWELL, MAINE

DEPARTMENT OF BUILDING INSPECTION

PERMIT

No. 08-082

Please Read Application and Notes, if any, attached

This is to certify that

Lee S. Theberge has permission to construct a new house w/ side porch at 05 Lawrence Point of W. [unclear]

Sara Theberge
15th house w/ side porch approved plan

provided that the person applying for this permit shall comply with all of the provisions of the Statutes of Maine and of the Ordinances of the Municipality of Harpswell regulating the construction, maintenance and use of buildings and structures, and the application on file in this department.

Notification for inspection must be given and written permission procured before this building or part thereof is lathed or otherwise finished, unless waiving of these requirements is indicated in space below.

Apply for street line and grade if nature of work requires such information

IMPORTANT NOTICE
A certificate of occupancy must be procured by owner before this building or part thereof is occupied, unless waiving of such requirement is indicated in space below.

The owner/applicant has the burden of ensuring that the owner/applicant is measuring required setbacks from the legal boundary lines of the lot. The grant of this approval in no way relieves the owner/applicant of this burden. The Code Enforcement Office is not responsible for measuring setbacks or for ensuring that owner/applicant is correctly measuring required setbacks from the legal boundary lines of the lot. The approval holder would be well-advised to employ a Maine licensed land surveyor to ensure compliance with the setback requirements of the Town's valid use ordinances.

Approved 5/2/08

Inspector of Buildings

PENALTY FOR REMOVING THIS CARD

27/31
DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK

MUNICIPALITY OF HARPSWELL, MAINE

DEPARTMENT OF BUILDING INSPECTION

PERMIT

No. 09-136

Please Read
Application and
Notes, if any,
attached

This is to certify that LE TESSER
has permission to CONSTRUCT A FISH HOUSE PER APPROVED PLANS

at OSBORN BLVD. R.O.W.
provided that the person or persons applying for and accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the Ordinances of the Municipality of Harpswell regulating the construction, maintenance and use of buildings and structures, and the application on file in this department.

Notification for inspection must be given and written permission procured before this building or part thereof is lathed or otherwise finished, unless waiving of these requirements is indicated in space below.

Apply for street line and grade information. The nature of work requires such information.

IMPORTANT NOTICE
A certificate of occupancy must be procured by owner before the building or part thereof is occupied, unless waiving of such requirement is indicated in space below.

The owner/applicant has the burden of ensuring that the owner/applicant is measuring required setbacks from the legal boundary lines of the lot. The grant of this approval in no way relieves the owner/applicant of this burden. The Code Enforcement Office is not responsible for measuring setbacks or for ensuring that owner/applicant is correctly measuring required setbacks from the legal boundary lines of the lot. The approval holder would be well-advised to employ a Maine Licensed land surveyor to ensure compliance with the setback requirements of the Town's zoning and use ordinances.

Approved 7/1/09
X PER RECORDED
VARIANCE

William J. Holt
Inspector of Buildings

PENALTY FOR REMOVING THIS CARD

9704-67

I, Samuel W. Alexander, the duly appointed 27/31
Chairman of the Zoning Board of Appeals for the Town of Harpswell,
Cumberland County and State of Maine, hereby certify that on the
20th day of August, 1991, the following variance
was granted pursuant to the provisions of 30 M.R.S.A. 4963 and the Town of
Harpswell's Code of Ordinances.

1. Property Owner: Lee & Sara Theberge, RR 1 Box 562
Orr's Island, ME 04066
2. Property: Cumberland County Registry Book 3209,
Page 877. (Last recorded Deed in Chain of Title).
3. Variance and Conditions of Variance:
Min. lot size shall be 20,000 sq.ft. (Sec. 9.1.1.5) approved lot
size of 1,600 sq.ft.
Min. lot frontage shall be 100 ft. (Sec. 9.1.1.6) approved lot
frontage of 40 ft.
Min. setback from the high water mark shall be 25 ft. (Sec. 9.1.1.9)
approved setback of 8 ft. from
high water mark

IN WITNESS WHEREOF, I have hereto set my hand and seal this 3rd.
day of September, 1991.

Recorded
Cumberland County
Registry of Deeds
09/09/91 08:47:23AM
Robert P. Titcomb
Register

Town of Harpswell, Maine
Samuel W. Alexander
Chairman
Zoning Board of Appeals

Samuel W. Alexander
(Printed or Typed Name)

STATE OF MAINE
Cumberland, ss.

Then personally appeared the above-named Samuel W. Alexander
and acknowledged the above certificate to be his/her free act and deed in his/
her capacity as Chairman of The Town of Harpswell Zoning Board of Appeals.

SEAL

Norma M. Grimes
NORMA M. GRIMES
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JUNE 21, 1995
(Printed or Typed Name)
Notary Public

This certificate must be recorded in the Cumberland County Registry
of Deeds within 30 days of the granting of the variance for the variance to
be valid, pursuant to 30 M.R.S.A. 4963.

U-32 #82

HARPSWELL BOARD OF APPEALS

NOTICE OF DECISION

TO: Lee & Sara Theberge
RR 1 Box 562
Orr's Island, ME 04066

Date: July 16, 1991

DEAR: Mr. and Mrs. Theberge:

This is to inform you that the Board of Appeals has acted on your application for a (Special Exception, Conditional Use, Variance), as follows:

Approved _____ Denied ✓

If approved, the following conditions and safeguards are prescribed. Any violation of these conditions shall be a violation of the Ordinance.

1. _____
2. _____
3. _____
4. _____
5. _____

If denied, the reasons for denial are as follows:

more than 20'70 lot coverage

Samuel W. Alexander
Board of Appeals Chairman

HARPSWELL BOARD OF APPEALS

NOTICE OF DECISION

J. Edward Johnson

P.O. Box 1

Bailey Island, ME 04003

Date: July 16, 1991

Mr. Johnson:

To inform you that the Board of Appeals has acted on your application for a (Special Exception, Conditional Use, Variance), as follows:

Approved Denied

When approved, the following conditions and safeguards are prescribed. Any violation of these conditions shall be a violation of the Ordinance.

1. appeal approved with no porch
2. _____
3. _____
4. _____
5. _____

When denied, the reasons for denial are as follows:

Samuel W. Clelland
Board of Appeals Chairman

WARREN BOARD OF APPEALS

NOTICE OF DECISION

TO: Lee & Sara Theberge

Date: August 20, 1991

RR 1 Box 562

Orr's Island, ME 04066

DEAR: Mr. and Mrs. Theberge:

This is to inform you that the Board of Appeals has acted on your application for a (Special Exception, Conditional Use, Variance), as follows:

Approved Denied

If approved, the following conditions and safeguards are prescribed. Any violation of these conditions shall be a violation of the Ordinance.

1. no plumbing in this building
2. Reduce size of shed/guest house
3. to 16' x 24' - Attached shed 6' x 10'
4. _____
5. _____

If denied, the reasons for denial are as follows:

Samuel W. Alexander
 Board of Appeals Chairman