



Town of Harpswell
Board of Appeals Minutes
October 28, 2015
Adopted August 24, 2016

Members Present

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

Members Absent

Ellen Shillinglaw

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

The Chair read the Town Attorney’s letter to the Deputy Town Administrator of October 9, 2015 which states in part, *“You have asked me to give you my thoughts on a legal issue brought to you by the Board of Appeals recently involving the denial of a plumbing permit for a fish house located on Orr’s Island in the CF zone. I have had a chance to review the many background documents you have provided to me, including the 1988 ordinance that was in effect at the time the applicant received approval for the special exception in August of 1991 and a chronology of events and documents provided by the applicant. Based on the information provided, I believe the Board of Appeals would be reasonable in concluding that the Notice of Decision dated August 20, 1992, including the “no plumbing in this building” condition imposed in the Notice, should control over the Certificate of Variance Approval dated September 3, 1991, which omitted the no plumbing condition and was recorded in the Registry of Deeds shortly thereafter.”* (Attached)

Mr. Theberge read the Maine State Statutes definition of plumbing which states, *“Plumbing” means the installation, alteration or replacement of pipes, fixtures and other apparatus for bringing in potable water, removing waste water and the piping connections to heating systems using water.*” (Attached)

and

“Plumbing fixture” is an approved installation apparatus that is supplied with water that receives a liquid borne waste and discharges waste into a drainage fixture.”

Mr. Theberge asked the Board to determine that a composting toilet is not a plumbing fixture.

Mr. Knight feels the applicant makes a sound argument about the equipment. He asked the CEO about a prior meeting where the State Plumbing Code’s definition is a plumbing fixture. If the State says it is a plumbing fixture the right approach would be to have the State Plumbing Code updated. He feels that maybe this device should not be a plumbing fixture. Mr. Knight asked the Code Officer if this is a plumbing fixture.

Fred Cantu, Code Enforcement Officer said that a composting toilet is considered a primitive toilet. He read from the Subsurface Wastewater Disposal Manual 10-144 CMR 241 Section 4 (1)(2)(a), which reads, *“A primitive disposal system consists of a grey water disposal field designed to handle hand-carried or hand-pumped water only and an alternative toilet. Temporary portable toilets are not alternative toilets and shall not be used as permanent alternative toilets.”*

He continued reading Uniform Plumbing Code Table 4-1 which states, *“Dwellings shall have the following: 1 water closet, 1 lavatory, 1 bathtub or shower, 1 kitchen sink and 1 laundry tray or washing machine standpipe.”* Uniform Plumbing Code 713.1 states, *“Every building in which plumbing fixtures are installed and every premises having drainage piping thereon shall have a connection to a public or private sewer.”* (Attached) Mr. Cantu stated that they cannot put a public or private sewer on this lot because the lot is too small.

Mr. Knight asked other questions regarding the State Plumbing Code and possible changes to the Code. Asked if this is a dwelling, Mr. Cantu read *“While the term “fish house” is not identified in the International Building Code 312, the closest structure classification is as a utility structure, which includes sheds, garages, and other utility structures that do not require plumbing. The inclusion of plumbing would constitute a change in use as specified in Harpswell Basic Land Use Ordinance Paragraph 11.4.4 AND Harpswell Shoreland Zoning Ordinance Paragraph 15.11.4, and as such would require the installation of a first time wastewater disposal system.”* (Attached) Mr. Cantu said that either way the town cannot meet those criteria on that lot.

After Board discussion:

The Chair appointed Pat Lawson a full voting member for this meeting.

Ned Simmons moved seconded by John Perry to accept the Town Attorney’s opinion that the no plumbing condition applies in this instance regardless of what the recorded variance says. Motion carries 5-0.

Ned Simmons moved seconded by John Perry that based on the fact that there is no plumbing allowed on this property that we decline to consider the plumbing application. Motion carries 5-0.

New Business: 15-10-01BA – James & Priscilla Ragonese, 150 Tondreau Point Road, Map 48 Lot 82 – Section 14.1.4.2 Undue Hardship Variance – Property Setback for Placement of Garage

Jim Ragonese told the Board that that the property in question has been in the family for more than 50 years and was originally a non-buildable lot. A road was put in on this property and the layout of the property changed. He hired a surveyor to determine the setbacks to the abutter and water and the request for a garage is within the 75 foot setback from the water and 25 feet from the property line.

William Wells was asked about the setbacks to the road and he told the Board that when a road goes through the property there is no setback to the road in the Shoreland Zoning district. r. Ragonese said that the neighbors are okay with the variance request and he feels this would not be detrimental to the neighborhood.

The Board discussed the issues of primary residency, reasonable return on the property and the abutters. Mr. Simmons read the requirements needed for the variance. After continued discussion:

Ned Simmons moved seconded by John Perry to continue this until the regularly scheduled meeting in May 2016, unless in the meantime a request is received to withdraw or request to come back sooner than that. Motion carries 5-0

15-10-02BA – R. Donald Prescott, 931 Cundy’s Harbor Road, Map 64 Lot 64 – Section 14.1.4.4 – Setback Variance for Single Family Dwelling

Mr. Prescott said he purchased the house in question in September 2013. The Code Office supplied plans of the house and deeds. When he went to obtain a mortgage from the bank he was turned down because the survey from the bank showed there were setback problems. He obtained his own survey. Mr. Prescott got a permit to screen-in the existing portion of the porch. He has obtained letters from two abutters in support of this variance.

Mr. Simmons noted that this type of variance cannot be a hardship created by prior or previous owners. He mentioned that the Board of Selectmen handle this type of after-the-fact variance with a Consent Agreement. Mr. Prescott noted that the original builder did not follow the plans but when the plans came through they were in compliance.

Ned Simmons moved seconded by Jim Knight to continue this indefinitely until they hear back either that Mr. Prescott withdraws or comes back to resolve this. Motion carries 5-0.

Ned Simmons moved seconded by John Perry to deny the appeal. Motion carries 5-0.

Other Business: Consideration of Minutes of September 23, 2015

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

Adjournment: The meeting adjourned at 8:30 PM.

Respectfully submitted by:

Diane E. Plourde
Recording Secretary