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**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
MAY 11, 2017**

**CALL TO ORDER** - 5:00 PM

Members Present:    Jay Smith – Chairperson  
                             Doug Mayer  
                             Mike Horn

Members Excused:    Glenn Deletetsky - Vice Chair  
                             Peter Griswold - Secretary  
                             Jerry DeHart (1<sup>st</sup> Alternate)

Also Present:         Scott Heyland, Ogunquit Code Enforcement Officer  
                             Tom Vines, Applicant  
                             Jay Lawrie, Applicant's Representative (Contractor)  
                             Arthia Zandstra, Applicants Representative (Architect)

Mr. Smith noted that a quorum was present, and the Board would follow the agenda as posted. Mr. Smith also informed the Applicants that having only three Board members present, any motion or decision will require a unanimous vote in order to pass. He suggested to the applicant that they might want to consider whether or not they want to proceed under these somewhat restricted circumstances or table the application until more Board members are available.

Mr. Vine responded that he wanted to proceed tonight with the three Board members.

**ACCEPTANCE OF MINUTES** – February 15, 2017

**Mr. Horn Moved to Accept the Minutes of the February 15, 2017 Meeting as submitted.  
HORN/MAYER 3:0 UNANIMOUS**

**UNFINISHED BUSINESS** – None

**NEW BUSINESS** –

**1. KENDRA LEBWOHL and TOM VINES – 14 Hickory Hill Lane – Map 7 Block 33 – Residential District (RD) – Variance Appeal under Article 5.2.B.2.a Relaxed Dimensional Standards Variance, Available Outside of Shoreland Zones. The Applicant requests setback variance as depicted on submitted plans.**

Mr. Smith confirmed that no member of the Board had a conflict of interest sufficient to disqualify him from hearing this case. He noted that Board Member DeHart did have a conflict of interest (he had been a consultant for the applicant regarding the proposed project) which is why he was not present at this Hearing.

The Board members confirmed that the Board did have standing to hear this case.

Mr. Lawrie addressed the Board on the Applicant's behalf. Mr. Lawrie stated that the house is an eyesore and needs to be brought up to date and up to code. He noted the low ceilings, the electrical panel which is too close to the sink, and poor insulation. The Applicants want to build a more comfortable, safe, and attractive home which meets all the current safety and Town Codes. It would be very difficult to upgrade the existing structure, it was poorly built; and it is currently a non-conforming structure on a non-conforming lot. The intent is not to expand the footprint because the existing building already doesn't meet setbacks. The Applicant would like to demolish the existing structure, rebuild it as small as possible with increased headroom inside. He understood they are locked in by the current footprint, however if the interior spaces can be made taller it will provide a more comfortable livable space. The Applicants also want to make the new structure more energy efficient and comfortable during the winter. They do not intend to live there year round but do like to come up in the winter.

The proposed design was intended to improve the appearance, better fit into the neighborhood and add value to the property. The Applicant spoke with abutters and is able to provide three letters of support for the project.

Mr. Lawrie noted that this is a corner lot with two front yards which makes the setbacks more difficult to meet. The Applicant is requesting a volume increase by raising the main ridge 6'1". One side wall will expand by 1'6" and the other sidewall will go up 3'. The square footage of about 650' will stay the same. This will allow for two small bedrooms which should feel less cramped because the ceiling height will be raised.

Mr. Lawrie submitted an alternate design which could meet all the setback and height restrictions if the variance request is denied. He agreed that it is not an attractive design and the Applicants do not want to use it because it would detract from the look and feel of the neighborhood.

Mr. Heyland noted that the submitted plans indicate some walls which will remain; and new foundation areas. He asked Mr. Lawrie if the proposal is for a total rebuild.

Mr. Lawrie responded that one portion of the existing foundation will remain, there will be another new portion where there currently is no foundation, and the remaining existing foundation is in terrible shape and needs to be replaced.

Mr. Heyland stated that this is a difficult application because it involves several setback violations. The foundation under half of the building will remain and the foundation under the south and east ends of the building will be new.

Mr. Heyland asked which sides of the building are proposed for vertical expansion.

Mr. Lawrie responded that portions of all four sides of the building include proposed vertical expansion.

Mr. Heyland summarized that while the footprint will remain, all four sides of the structure will be vertically expanded.

Mr. Smith asked about Mr. Lawrie's comments about safety and the electrical panel.

Mr. Lawrie responded that the building has been cobbled together over the years. The electrical service panel is currently located in the kitchen, near the sink; and probably wouldn't meet code. To make the house legal it would be cheaper to demolish it. He noted that upgrades were made periodically; and he believes the electrical system is not grounded.

Mr. Smith asked about low ceilings and head room. He asked what the current height is.

Mr. Lawrie responded that it is below 7' in some places.

Mr. Smith asked what the code is for head room.

Mr. Heyland responded that it is 7' for residential properties.

Mr. Smith asked about the sloping floors.

Mr. Lawrie responded that the floors are way out of level. A marble placed on the floor would roll.

Mr. Smith asked about winterizing the building.

Mr. Lawrie responded that the property is currently somewhat insulated. It does have a heating system; and it's drafty, cold, and expensive to heat. This makes it difficult for the applicants to use during the winter.

Mr. Mayer asked about the proposed new foundations.

Mr. Lawrie responded that there is an existing foundation which is in terrible shape and needs to be replaced; another portion has no foundation at all. He noted that no basement is proposed only frost protection. Part of the existing foundation, which will be kept, has about 4' feet of headroom.

Mr. Mayer asked what the proposed volume increase will be.

Mr. Lawrie responded that he never worked that out.

Mr. Mayer stated that it's important because of the issue of habitable space.

Mr. Lawrie responded that there really isn't any increase in "habitable space" only vertical space for cathedral ceilings. They have no intention of adding a second floor. The building is so small that any staircase would eat up too much floorspace.

Mr. Mayer asked if the increase in volume could be called "habitable space" because of the increase in headroom.

Mr. Lawrie responded that over the bedroom there is a flat ceiling, this case really involves the steep slope of the roof. He confirmed that there is no second floor bedroom.

Mr. Horn asked about demolishing.

Mr. Lawrie responded that they want to demolish the building, leave the chimney and the good foundation and build the rest all new.

Mr. Smith noted that this case involves a non-conforming lot which isn't an issue here. The height and lot coverage are also not at issue. His concern is the increase in volume with the proposed new structure. He posed the question: is the spirit of the Ordinance intended to address volume as in air space or floor/habitable space? He also asked if it would be legitimate to argue that no increase in floor/habitable space isn't the same as an increase in "volume".

Mr. Smith asked if the Applicant's preference is to demolish and build new.

Mr. Lawrie responded that a new build would be easier and the final product would be better; and it would be less expensive. It would be hard to argue not to rebuild.

Mr. Mayer asked about the issue of density.

Mr. Smith asked the Applicant how long he has owned the property.

Mr. Vine responded that he purchased it about a year ago. He used a local real estate agent, ReMax.

Mr. Smith asked if, at the time of purchase, he was aware of the irregularities of the lot.

Mr. Vine responded that initially they were not. They liked the location and the neighborhood. He knew it needed work but not how much. The real estate agent suggested that for \$30,000 they could make it really nice, however as they got into plans they discovered it would take much more. He was unaware that the setback restrictions would be as limited as they are. He was unaware of how much he could not do. They had it surveyed after they purchased it and learned at that time just how limited it was.

Mr. Vine noted that the heating system is very old and does not heat the bedroom. He added that the current tax card indicates that the house is 688 square feet which includes a 64 square foot loft above the kitchen. The proposal is to eliminate that 64 square foot loft which will leave them with a total of 624 square feet of floor/living space. They also want to reconfigure the kitchen to create a 2<sup>nd</sup> small bedroom. Mr. Vine informed the Board that the current ceiling height in the bathroom is only a few inches over his head; and this includes a light in the shower. He is fairly sure that this does not meet code. The same situation extends to the bedroom where a ceiling fan is only a few inches from his head. Mr. Vine confirmed that the electrical panel is about two inches from the kitchen sink.

Mr. Horn asked Mr. Heyland if the building meets life safety code.

Mr. Heyland responded that he hasn't been inside the building, however from the Applicant's description there are probably multiple code violations and the building most likely would not meet the Life Safety Code. He noted that the existing loft is accessed by a ladder which is totally against the Building Code.

Mr. Heyland confirmed that the Building Code does require a 7' ceiling height and it sounds as if portions of this structure do not meet that requirement, particularly where the eaves slope down.

Mr. Heyland informed the Board that density involves the number of dwelling units on a lot, not how big they are or how much they cover.

Mr. Smith noted that the Board is sympathetic to the Applicant's problems, which are things the real estate agent should have brought to his attention. He added that there are certain standards in the Ordinance which must be met; and if the Applicant can't meet them the Board must deny the variance request.

Mr. Smith noted that the problem is with demolition. When a structure is demolished the new structure needs to be brought back into conformity. This would significantly limit what this applicant could do.

Mr. Vine asked what percentage of the building would have to be retained to have it not be considered to be a total demolition.

Mr. Heyland responded that if the variance is granted the current setbacks run with the land and the applicant could build the structure as proposed. Whether they leave, or expand the vertical height of an old wall, or construct a new wall it is the same thing. The setback is an imaginary line which runs both horizontally across the property and vertically up. He added that just because a ceiling height doesn't meet requirements doesn't mean it automatically needs to be upgraded; the setback issues do not go away. Mr. Heyland summarized that the reason the applicant is before the Board is because they want to add volume to an existing setback. It is irrelevant whether that addition is over an existing wall or a new wall.

Mr. Vine asked if it would make a difference if they proposed flat ceilings instead of the cathedral ceilings.

Mr. Heyland responded that if the Applicant wanted to construct a new building in the same footprint as the original structure, and put a flat roof on it without any vertical expansion, he (Mr. Heyland) could issue the permit without involving this Board. It becomes complicated when the applicant wants to demolish the existing house and foundation; and construct a new house with an increase in volume. In that case the structure would have to meet all current Code requirements.

Mr. Horn referred to the Ordinance's language regarding enlargements outside of the Shoreland Zone; the Ordinance states that any increase in building volume, already in violation, is prohibited.

Ms. Zandstra informed the Board that she is the architect who designed the proposed building.

Ms. Zandstra stated that the proposed plan reduces the existing volume by taking away the large dormer and loft area. That is volume which can be subtracted from the volume increase they are asking for.

Mr. Heyland referred to the photographs of the existing structure. A portion of the dormer is within the setback. This means that some volume in that location may go away, while the proposed volume increase is in another portion of the building. He confirmed that no second story is proposed.

Mr. Mayer asked if the loft area is considered to be livable space.

Mr. Heyland responded that, it is a finished area however it is not a legal livable space.

Mr. Lawrie noted that he hopes the Board has the power to not follow the rules to the letter. He argued that the proposed structure will be better.

Mr. Smith asked if there were any more questions. There being none he closed the public portion of the Hearing at 5:55 p.m.

Mr. Smith summarized the case:

This is a nonconforming corner lot which does not meet the minimum square feet;  
It is a conforming use, but a nonconforming building which already does not meet the setbacks.

Mr. Smith noted the applicable sections of the Ordinance involve the definition of a corner lot which helps define the setbacks. Article 3 has several subparagraphs which apply: 3.1 and 3.3 and 3.4. He noted that Article 3.1 states that a nonconforming building cannot be altered in any way to become more nonconforming. The Board cannot aggravate a nonconformity except as specified by law as outlined in Section 3.3.

Mr. Smith asked if the proposed plan aggravates a nonconformity. He referred to the relevant ordinances noted above. He noted that section 3.3.C is the section which is primarily important to this case. Mr. Smith noted that any act, other than a willful act, which destroys a structure allows for reconstruction of a nonconforming structure on a nonconforming lot.

Mr. Smith summarized that the Board begins with Section 3.4.C which addresses control of enlargements, leads to Article 5.2.B.2.a as cited in the Application. Section 5.2.B.2.a describes the different types of variances, and the criteria which need to all be met in order for the granting of a variance.

Mr. Smith informed the Applicant that the Board sympathizes with him and would like to grant him the variance request he seeks, however the Board is required to strictly follow the Zoning Ordinance requirements.

At this time the Board began a discussion of the standards in Section 5.2.B.2.a.

**i. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.**

Mr. Smith reminded everyone that “unique circumstances of the property” involves the land, topography, wetlands etc. It does not involve the lot size, but rather the physical characteristics of the land.

Mr. Mayer noted the language regarding the general condition of the neighborhood. He pointed out that this neighborhood contains small lots similar to the Applicant’s. Most of them are probably nonconforming lots containing nonconforming structures. There is nothing unique about the circumstances of the property.

**ii. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably or detrimentally effect the use or market value of abutting properties.**

The Board agreed that this standard had probably been met.

**iii. The practical difficulty is not the result of action taken by the petitioner or a prior owner.**

Mr. Smith noted that “practical difficulty” precludes the ability of the petitioner to pursue a use permitted in the district in which the property is located. Mr. Smith noted that even if the variance is denied the Applicant could still use the property as a residence.

Mr. Mayer noted that the practical difficulty is the condition of the structure, and that condition is the result of a prior owner who did not keep the property in good repair.

Mr. Smith argued that the practical difficulty is not the result of an action of the current owner.

Mr. Mayer responded that the current owner purchased the property as it is, which could be argued to be an action taken by the petitioner.

**iv. No other feasible alternative to a variance is available to the petitioner.**

Mr. Mayer suggested that there may be feasible alternatives.

Mr. Horn responded that a feasible alternative is to do a minimum amount of reconstruction.

Mr. Mayer reminded everyone that Mr. Heyland stated that if the applicant proposed a new structure with a flat roof he could be granted a permit without any variance required.

**v. The granting of a variance will not unreasonably or adversely effect the natural environment.**

The Board agreed that this standard would be met.

**vi. The property is not located in whole or in part within the Shoreland Zone.**

The Board agreed that this standard would be met.

Mr. Smith summarized that the Board has agreed that Standards: II, V, and VI would be met. He noted that a strict interpretation of the language of the law would lead to a denial. He added that any liberal interpretation would be contrary to the spirit of the law. He asked what this would mean.

Mr. Heyland responded that a granted variance would be restricted to what the Applicant has presented in the submitted plans. A Certificate of Variance and probably the submitted plans would need to be filed at the Registry of Deeds and would stay with the property forever. It would be very specific to what has been presented to this Board. He added that this is a minimal request.

Mr. Horn confirmed that the Applicant is asking for a minimal expansion of volume. He noted that they still do not have the specific numbers reflecting the amount of current volume and the proposed volume expansion.

Mr. Mayer referred back to Article 3.3.C.2 which states that outside of the Shoreland Zone any upward expansion of walls or any other changes to the building which increase the volume are prohibited. They would be considered to be a prohibited expansion.

Mr. Heyland responded that this is why the Applicant is before the Board.

Mr. Horn expressed concern with Standard III.

Mr. Smith agreed that by strict application that Standard is not met, and the Board is challenged to apply strict interpretation.

Mr. Smith reminded everyone that any motion will require a unanimous 3:0 vote in order to pass.

The Board formally reviewed the Standards of Article 5.2.B.2.a with the following results:

- i. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.**

Mr. Mayer asked if the size of the property is a “unique circumstance”.

The Board members suggested the house and land together might contribute to the “Unique Circumstances”.

Ms. Smith suggested that the condition of this particular structure, in comparison to other structures in the neighborhood, make it unique and inconsistent with the general condition of the neighborhood. He agreed that this is a very broad interpretation of the language.

**Mr. Horn Moved to Find this Standard to be MET  
HORN/MAYER 3:0 UNANIMOUS**

- ii. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably or detrimentally effect the use or market value of abutting properties.**

**Mr. Horn Moved to Find this Standard to be MET  
HORN/MAYER 3:0 UNANIMOUS**

- iii. The practical difficulty is not the result of action taken by the petitioner or a prior owner.**

Mr. Smith suggested that the difficulty is not the result of action taken by the petitioner, if the Board defines the practical difficulty as: substandard construction, no insulation of significant amount, unlevel floors, ceilings below building code, faulty illegal electrical panel. Mr. Smith argued that these things are not caused by the current owner.

Mr. Horn responded that by purchasing the property, in the condition it exists, the Applicant caused the difficulty. He noted that the Board hasn't heard anything that requires the property owner to bring the building up to Code. He reminded the Board that the Code Officer has not been inside the property, even though he suggested the property is probably in violation.

Mr. Mayer suggested the practical difficulty is the result of actions, or lack thereof, by the prior owner.

Mr. Vine asked if he could be heard and the Chairman reopened the public portion of the meeting.

Mr. Vine stated that the house is grandfathered from the time it was built. Neither he, nor the prior owner, did anything to cause the difficulty. He noted that the current setbacks were put in place after the house was built.

Mr. Smith agreed and added that the setbacks became applicable to all future development.

Mr. Mayer added that any renovations must be done without aggravating the existing nonconformity.

Mr. Smith agreed and noted that vertically adding to the walls would aggravate the nonconformity.

Mr. Mayer added that the Board is very limited by the existing Ordinance.

Mr. Smith confirmed that this is a preexisting nonconforming structure and almost any improvements to the structure will aggravate that nonconformity. He suggested that the Applicant should have known what he was getting into when he purchased the property and there should probably be more transparency from the real estate agent.

Mr. Lawrie suggested that the practical difficulty was not caused by any of the owners because the building predates the current rules.

Mr. Smith responded that the Ordinance defines “Practical Difficulty” and it basically says that without a variance the Applicant couldn’t live in the house. It is a very strict standard to meet.

Mr. Mayer referred to Article 3.3.C.2 which prohibits the increase in the volume.

**Mr. Horn Moved to Find this Standard to be NOT MET  
HORN/MAYER 3:0 UNANIMOUS**

**iv. No other feasible alternative to a variance is available to the petitioner.**

Mr. Horn suggested a flat roof is feasible, as the Code Enforcement Officer suggested.

The Board agreed that they cannot allow nonconformities to be made more nonconforming.

**Mr. Horn Moved to Find this Standard to be NOT MET  
HORN/MAYER 3:0 UNANIMOUS**

**v. The granting of a variance will not unreasonably or adversely effect the natural environment.**

**Mr. Mayer Moved to Find this Standard to be MET  
MAYER/HORN 3:0 UNANIMOUS**

**vi. The property is not located in whole or in part within the Shoreland Zone.**

**Mr. Smith Moved to Find this Standard to be MET  
SMITH/HORN 3:0 UNANIMOUS**

Mr. Smith informed the Applicant that his application for a variance does not meet all six standards under Article 5.2.B.2.a specifically items iii and iv have been deemed to be not met, therefore the application is denied.

**CODE ENFORCEMENT OFFICER BUSINESS –**

Mr. Heyland invited the Board to the Planning Board's Workshop on Marijuana which will take place on May 22<sup>nd</sup>. He noted that there will be no marijuana questions on the June 2017 Town Warrant.

**OTHER BUSINESS –**

Mr. Smith noted the upcoming SMPDC Annual Meeting and the topic will be Marijuana.

**ADJOURNMENT -**

**The Board Adjourned at 7:10 p.m.**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy  
Recording Secretary

*Approved on May 18, 2017*