



Land Use Office  
Post Office Box 875  
Ogunquit, Maine 03907-0875

**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
MARCH 22, 2018**

**CALL TO ORDER - 4:00 PM**

Members Present:    Jay Smith                    (Term Expires 2020)  
                              Doug Mayer                (Term Expires 2019)  
                              Mike Horn                 (Term Expires 2018)  
                              Carole Aaron\*            (Term Expires 2018)  
                              Glenn Deletetsky\*\*     (Term Expires 2018)  
                              Peter Griswold            (Term Expires 2019)

Members Excused:    Jerry DeHart                (Term Expires 2020)  
\* *1<sup>st</sup> Alternate*            \*\* *2<sup>nd</sup> Alternate*

Also Present:            Scott Heyland, Ogunquit Code Enforcement Officer

Mr. Smith noted that a quorum was present; and the Board would follow the agenda as posted.

Mr. Smith noted that due to Mr. DeHart’s absence Mr. Deletetsky would be a full voting member for the duration of this meeting.

**ACCEPTANCE OF MINUTES – March 1, 2018**

**Mr. Griswold Moved to Accept the Minutes of the March 1, 2018 Meeting as Amended.  
GRISWOLD/HORN 5:0 UNANIMOUS**

**UNFINISHED BUSINESS –**

**NEW BUSINESS –**

- 1.    STACEY CROWELL – 9 Scotch Hill Trail – Map 7 Block 15-2 – General Business District 1 (GBD1). Variance Appeal Under Article 5.2.B.2.a Relaxed Dimensional Standards Variance. Request for an 8’9” variance on the south side of the property.**

Mr. Smith asked if there was anyone on the Board who had a conflict of interest sufficient to Disqualify him/her from voting. There was no one.

It was determined that the Board had standing to hear this case.

It was noted that the Applicant did not indicate on her Application Form that she was appealing under Article 5.2.B.2.a and the Recording Secretary asked that this be clarified.

Stacey Crowell addressed the Board and summarized her proposed plan. Ms. Crowell stated that She is asking for a 8'9" variance so that she can put a 1<sup>st</sup> floor bedroom addition on the back of her house. She summarized her letter to the Board dated February 9, 2018 (*a copy of which will be maintained in the Applicant's Planning Board file*). Ms. Crowell stressed the historic nature of her house adding that an addition to the rear of the structure would keep the historic look of the property and neighborhood and would be in keeping with the Comprehensive Plan.

Mr. Crowell added that most of the proposed addition would replace an existing deck and patio. She added that she plans to spend the rest of her life here, and at some point will need a first floor bedroom. She added that lack of the first floor bedroom would make it difficult to sell the house.

She added that there is no feasible alternative to the location of the proposed bedroom other than the southwest rear of the building. If she were to locate the bedroom in any other location it would damage the historic nature of the house and the neighborhood.

Mr. Horn asked if there will be access to the main house from the proposed room

Ms. Crowell responded that there will be. The new bedroom would be off the living room.

Mr. Mayer noted that the site plan indicates two buildings.

Ms. Crowell responded that there is a garage that has a 2<sup>nd</sup> floor office with exterior stairs to access the office.

Mr. Mayer asked the Applicant to confirm that she is requesting a variance under Article 5.2.B.2.a

Ms. Crowell confirmed that she is.

Mr. Smith asked where the chimney would be located.

Ms. Crowell responded that there will be no chimney in the new addition, there is an existing chimney in the original house. The new addition is about 18 feet in length.

Ms. Aaron asked if there would be access to the outside.

Ms. Crowell responded that there might be; she added that the existing bulkhead will be removed.

Mr. Mayer asked if this is Ms. Crowell's primary residence.

Ms. Crowell responded that it is.

Mr. Griswold asked about the dimensions of the new addition.

Ms. Crowell responded that it will be 18'3"x12'1".

Ms. Crowell noted the privacy wall on the plans, the purpose is to ensure privacy and keep cold air from coming in during the winter.

Mr. Smith asked if the Applicant had met with the Historic Preservation Commission.

Ms. Crowell responded she met with them when she purchased the house and made several major renovations.

Mr. Horn responded that there will have to be a review by the OHPC however that doesn't affect the ZBA's action at this meeting.

Ms. Aaron asked if the Condominium Documents allow for this expansion.

Ms. Crowell responded that expansion of the main house is allowed; when she built the garage she spoke with the Association members.

Mr. Smith asked for confirmation that all the Association Members are aware of this meeting.

Ms. Crowell responded that they are.

Mr. Smith asked if there were any additional questions. There being none he closed the Public Portion of the Hearing at 4:30 p.m.

Mr. Smith summarized that this application involves a non-conforming structure which a large amount of the building sitting on setbacks. He noted that Article 2 and the definition of Non-Conforming Structure is relevant to the Board's review; as does Article 3.3.

Mr. Smith noted that the Board's expansions of non-conforming built lots are allowed only if they meet all the requirements application under Table 703.1. If they cannot meet the requirements the property owner must seek a variance, which is what this applicant is doing.

Mr. Smith also noted that this case also involves the Condominium rule under Article 7.2.B which states that:

*"...If more than one principal building is located on a lot, the buildings shall be separated by a distance equal to twice the minimum side setback for the district in which they are located. On lots owned by a condominium association with a number of principal buildings including, but not limited to, single-family dwellings, setbacks between the principal buildings must be at least twice the minimum side setback of the district..."*

Mr. Horn referenced 3.3.C.2 which states that:

*"...Outside of any Shoreland Zone, upward extension of walls or any portions of buildings that increase the building volume that is already in violation of setback requirements shall be considered as a prohibited expansion of a nonconforming structure..."*

Mr. Horn suggested that the proposed addition will increase the volume of the original structure.

Mr. Smith responded that the increase isn't allowed; unless the Applicant obtains a Variance.

Mr. Griswold asked if this was a clustered or planned development.

It was determined that this is not a clustered or planned development.

Ms. Crowell responded that there are only four dwellings within this association.

Mr. Smith reiterated that this case involves some unique setback requirements because it is a condominium association.

Mr. Smith asked if the historic nature of the home is within the Board's jurisdiction

It was determined that it did not.

Ms. Aaron noted that the Applicant indicated that the previous Code Enforcement Officer informed her that she would be able to have the proposed addition. Ms. Aaron asked if the Applicant had anything in writing to support this.

Mr. Smith responded that Ordinances change over time. In some case this leads to a grandfathered situation in other cases they do not. Mr. Smith suggested the hearsay should not impact this Board's process.

The Board reviewed the standards as noted in Article 5.2.B.2.a

- a. Relaxed Dimensional Standards Variance, Available Outside of Shoreland Zones. For structures located outside of any Shoreland Zones, the Board may grant a variance only from those dimensional standards listed in subsection B.1.a. above, and only when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist.
  - i. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.

Mr. Smith reminded the Board that "property" refers to the condition/topography of the land; and does not refer to a structure. He asked if there was anything unique to this property.

Mr. Smith reminded everyone that during a previous case the Board determined that a structure located in a right-of-way applied to the property. However he confirmed that he does not believe that "property" refers to structures.

The Board confirmed that this condominium complex abuts other condominium complexes in the neighborhood.

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

The Board agreed that the proposed addition might increase the market values of abutting properties.

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

Mr. Smith noted that if the variance is denied the Applicant could continue to use the property as she has been.

Mr. Mayer added that when the Applicant purchased the property all of the conditions were in place, and the conditions of use would have been known by the Applicant.

The Board agreed that it is the Applicant's desire to make the house more habitable that is an action taken by the current owner/petitioner.

Ms. Aaron asked about "practical difficulty".

Mr. Smith responded that "practical difficulty" as defined in the Ordinance under Article 5.2.B.2.a means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Mr. Smith summarized that if the Board were to deny the variance request it would preclude the Applicant's ability to use the property and would pose a significant economic injury to her. He noted that the Courts have take a very strict interpretation to this standard.

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

Mr. Griswold suggested that there are other cases where property owners had to construct additions in an odd manner to meet requirements. This applicant could construct an addition with a curved side, while it wouldn't look as pleasing it is feasible.

v. The granting of a variance will not unreasonably adversely affect the natural environment.

The Board agreed that the proposed addition would not affect the natural environment. There is already a deck and patio in the area of the proposed addition.

vi. The property is not located in whole or in part within the shoreland zone.

The Board confirmed that this property is not in the Shoreland Zone.

At this time the Board voted on the Standards of Article 5.2.B.2.a with the following results:

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

**Mr. Horn Moved to find that this Standard has Not been Met.  
HORN/DELETETSKY 5:0 UNANIMOUS**

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

**Mr. Mayer Moved to find that this Standard has been Met.  
MAYER/DELETETSKY 5:0 UNANIMOUS**

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

**Mr. Mayer Moved to find that this Standard has Not been Met.  
MAYER/HORN 5:0 UNANIMOUS**

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

**Mr. Horn Moved to Find that this Standard has Not been Met  
HORN / DELETETSKY 5:0 UNANIMOUS**

- v. The granting of a variance will not unreasonably adversely affect the natural environment.

**Mr. Mayer Moved to Find that this Standard has been Met.  
MAYER/HORN 5:0 UNANIMOUS**

- vi. The property is not located in whole or in part within the shoreland zone.

**Mr. Mayer Moved to Find that this Standard has been Met.  
HORN/DELETETSKY 5:0 UNANIMOUS**

**Mr. Mayer Moved to Deny the Request for a Variance due to the following Standards of Article 5.2.B.2.a having not been met: Standard i, iii, iv.  
MAYER/HORN 5:0 UNANIMOUS**

Mr. Horn informed the Applicant that her variance request has been denied.

**CODE ENFORCEMENT OFFICER BUSINESS – None**

**OTHER BUSINESS –**

Mr. Griswold asked Mr. Heyland if he know if any reference agreement regarding a case which this Board heard on March 1, 2018.

Mr. Heyland responded that he has seen the agreement, also that Applicant's attorney provided copies of the agreement to the Board.

Mr. Smith stated that he has been told during training seminars that the granting of a variance is the exception, not the rule.

**ADJOURNMENT –**

**Mr. Mayer Moved to Adjourn at 5:20 p.m.  
MAYER/HORN 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy  
Recording Secretary

*Approved on October 9, 2018*