



Zoning Board of Appeals  
Post Office Box 875  
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**OGUNQUIT ZONING BOARD OF APPEALS  
MEETING MINUTES  
JULY 9, 2020  
VIA ZOOM**

**CALL TO ORDER - 4:00 p.m.**

Mr. Griswold called the roll and each Board member responded verbally.

Members Present: Jay Smith, Chair  
Jerry DeHart, Vice Chair  
Mike Horn  
Doug Mayer  
Peter Griswold, Secretary  
Carole Aaron (1<sup>st</sup> Alternate)  
Glen Deletetsky (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 for each motion Board Members would vote yea or nea verbally.

**ACCEPTANCE OF MINUTES** – June 11, 2020

**Mr. Griswold Moved to Accept the Minutes of the June 11, 2020 Meeting as Amended.  
GRISWOLD/HORN 5:0 UNANIMOUS**

**OLD BUSINESS** – None

**NEW BUSINESS**

- 1. BLAIR HODGE – 64 Beach Street – Map 7 Block 90-A – RP – Variance Request for structure height relief under Article 5.2.B.2.b – Dimensional Standards for Variances for Structures Located in Shoreland Zones.**

Mr. Smith asked if there was anyone on the Board who had a conflict of interest sufficient to disqualify him/her from hearing and deciding this case.

There was no one.

Mr. Smith asked if the Board has jurisdiction / standing to hear this case.

Mr. Mayer suggested the Board may not have jurisdiction; and he referenced Ogunquit Zoning Ordinance (OZO) Article 4.6.D which states:

*The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.*

Mr. Smith responded that this application only involves height restriction; there are no proposed changes to the footprint, setbacks, etc. He suggested that the Board does have jurisdiction to hear this case.

Mr. Heyland referred back to Article 4.6.B and he noted that it is applicable to undeveloped lots. This case involves an existing non-conforming structure on a non-conforming lot.

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

Mr. Smith noted that there are several other questions which will need to be addressed by the Planning Board with regard to the proposed new structure. The Zoning Board will only consider the request for a variance to exceed the allowable height limit.

It was noted that one of the Applicant's representatives, Nathan Amsden, was having technical difficulties getting into the ZOOM meeting.

Breyden Tuscher from The Tuscher Design Group addressed the Board as the Applicant's representative.

Mr. Smith agreed to hear him; and noted that Mr. Tuscher was the author of the summary document which accompanied the application paperwork.

Mr. Tuscher reviewed the June 25, 2020 summary document which accompanied the Applicant's submission.

He stated that the existing structure will be removed down to the foundation. A new structure will be constructed within the existing footprint. The new structure will be the same height as the existing structure except that the Applicant is asking for an increase of 3 feet to get out of the FEMA Flood Zone.

He added that there will be no other expansion in any direction.

There will be a slight increase in the volume of the new structure however they will remain below the 30% allowed by the Ordinance.

They propose leaving the existing foundation in tact however they will add to it, including flood venting to allow for the passage of water. There will be no livable / habitable space below the proposed 14 foot elevation. He noted that they are currently at elevation 9 or 11; and they need to get to 14' above sea level.

Mr. Griswold asked for the existing building height between the ridge pole and the average topography around it.

Mr. Tuscher referred to Sheet A-3 in the application packet. The building is 21 feet from the first floor to the ridge pole and is at elevation 11 which puts it at 22.5 feet or 23 feet.

Mr. Smith referred to the OZO definition of height as noted in Article 2 of the OZO:

*“Height of Building or Structure*

...  
*Within the Shoreland Zone, the height of a building shall be defined as the vertical distance between the mean original (prior to construction) grade at the corners on the downhill side of the structure and the highest point of the structure. The highest point of the structure shall be measured in the same manner as in non-Shoreland Zones.”*

Mr. Smith referred back to Sheet A-3; and suggested that the total height, from original grade to peak, is 23.1 feet, which is the existing “as built” height.

Mr. Griswold referred to Sheet A-5 which indicates that the height of the new structure will be 24'3<sup>2/8</sup>,”

Mr. Tuscher responded that sheet 5 says that average grade is 9'8<sup>3/8</sup>,”. The overall ridge pole height will remain the same, they will be lifting the new structure up 3 feet above existing grade.

Mr. Griswold asked for confirmation that Sheet A-5 indicates that the proposed height will be 24'3” which includes the 3' addition to the foundation for the water passage. If this is true then the existing building must be 21 feet high.

Mr. Tuscher agreed.

Mr. Smith again referenced the height as being measured from the height above the original grade to the outermost peak of the ridge. In this case he suggested it will be 23.1” and the proposed structure will be higher by 3 feet. There will be an increase in height between the existing structure and the proposed new structure. This difference is the variance the Applicant is requesting.

Mr. DeHart expressed confusion regarding the different numbers on the plans. He noted that the existing structure is 21 feet to the ridge pole on only one portion of the building. Other parts of the building are only 14 feet to 16 feet. He asked if the new structure will be 14 feet to 16 feet in those areas or if those elevations will increase as well. He asked this in relation to the proposed

30% volume increase. How will the Board know how much each area of the house will be raised?

Mr. DeHart asked for a survey showing each of the ridge points. He noted that if the Board grants a variance it will need to grant a variance for a specific number. Mr. DeHart wants to be able to say that the variance will be x for “this portion of the structure” and y for another portion. Without that specific information it will be difficult to grant a variance unless they pick a point and grant it for the entire space. He noted that the Applicant is saying that there has never been a 30% increase and he wants to go up, but the Board needs to know where.

Mr. Tuscher responded that the tallest portion of the structure is the 21 feet and he used that as the limiting factor; as long as no portion of the new building goes higher than that 21 feet; and they don't exceed 30% increase in the volume they should be OK.

Mr. Heyland added that Article 3.3.H - Nonconforming structure in the Shore land Zone states that the maximum height is 20 feet tall or the existing building height, whichever is greater. The entire area over the existing footprint could go to 21 feet or whatever is there today. He agreed with Mr. DeHart that other portions of the structure which do not appear to capitalize on that height could in fact do so over the footprint which does not violate a setback. Volume cannot be increased in setbacks.

This request is to add 3 feet onto the maximum height of 21 feet; and Board needs to determine if the existing building height is 21.5; and if that is good enough or if the Applicant can add the requested additional 3 feet.

Mr. Heyland added that he would have preferred to see a cross section of the existing building next to a cross section of the proposed new structure with elevations for both taken from original grade. The definition of “original grade” says it is taken from an average of two points on the downhill side.

Mr. DeHart asked if the Board should have an elevation certificate clearly showing the existing building, what the existing grade is, and exactly what the Board is being asked to provide.

Mr. Heyland agreed that this information would have been helpful.

Mr. Horn asked if the foundation enlargement applies to height.

Mr. Heyland responded that design standards would be reviewed by the Planning Board. He noted that this project will go to the Planning Board.

Mr. Horn asked if the lot was going to be divided.

Mr. Heyland responded that this lot cannot be divided. There isn't enough acreage to allow for this lot to be divided.

Mr. Smith asked to verify the height of the existing structure. He expressed confusion with the

amount of numbers being used. He calculates 23.1 overall height of the existing structure.

Mr. Heyland agreed that the information is confusing. He noted that the Board needs to know the existing building height as defined per the OZO definition. This should include the low two corners to the ridge of the existing structure; and what will those numbers be for the proposed of the new structure.

Mr. Griswold referred to Sheet A-5 which includes the requested 3 feet. He suggested the existing building's ridge will go up 3 feet.

Mr. DeHart responded that it is important for people living behind any house on the water to know how much higher that house in front of them may go when they anticipate the Code being followed as it is written. If the Board is going to grant a variance without a certificate showing where grade is today, where the existing house ridgepole is today, and where it will be in the new construction, it should have a certified stamped certificate. Mr. DeHart noted that the Board has just spent 30 minutes trying to establish what the height of the existing building is and how much it is going to be raised; and he would not be comfortable granting a variance when he does not know the exact existing and proposed conditions.

Mr. Smith agreed and summarized that the issue is the existing and proposed heights and the lack of clarity of the proposed information.

Mr. Tuscher asked if that information is on the Existing Conditions Plan submitted by Nathan Amsden.

Mr. DeHart responded that it is in Note #6. He added that there are two separate plans, one of which has no information as to who drew it. He added that neither of the plans is stamped.

Mr. Tuscher apologized and added that he has not seen the plans.

Mr. DeHart stated that he can't make a decision without a clear plan stamped by a certified engineer.

Mr. Deletetsky suggested the Board require a plan stamped by a licensed surveyor; and elevations showing exact existing and proposed elevations. This way the Board will be clear about what it is granting and the Applicant will be clear about what he is receiving.

Mr. Smith agreed that before and after, side by side, clear elevations would be helpful. He also referred to Note #6 and asked for a definition of "peak height".

Mr. Heyland responded that peak height is the top of the ridge excluding cupolas, weathervanes, etc. It is the highest point of the structure. The average grade is taken from the low side of the structure. Mr. Heyland agreed that someone needs to pull a line between the corners of the structure.

Mr. Griswold referenced Sheet A-5 and he asked if the new structure height will be 24' 3<sup>3/8</sup>".

And can the Board assume that the difference will be 3 feet.

Mr. Tuscher responded that the difference will be 3 feet 3 <sup>5/8</sup> inches.

Mr. Tuscher agreed that the granting of a variance should require certified plans and he asked if the Board would consider granting the variance with the condition that the certificate be submitted at a later time.

Mr. Smith responded that because of the sensitivity in the Resource Protection District and the sensitivity of any growth in height as it impacts abutters it is imperative that the Board has 100% accuracy and clarity regarding the existing height conditions and what they will be post construction. Mr. Smith suggested it might be better to defer a decision to a later time rather than rush to a decision.

Mr. Horn expressed confusion, particularly in the manner in which the information was presented. He wants to see the exact height difference between the existing and proposed structures.

Mr. Smith asked if there was anyone in the public who wished to be heard.

Kirsten Ross (184 Highland Avenue) referenced the change regarding the expansion of a structure and adopted language which referred to a height restriction rather than a volume measurement. If that height restriction was deemed by the State through the Shoreland Zoning Ordinance, does this board have the authority to allow the proposed structure to be higher than the existing.

Mr. Smith responded that they do, if all four standards in Article 5.2.B.2.b are met.

Kathryn Sewell (14 Bridge Street) is a direct abutter to the subject property. She supports a new single family home at this location. However she pointed out that this is a water front property, and for consideration of the homes and hotels behind it she feels the Applicant should be held to the ordinance standards. They should design the new structure to meet these standards. She noted that she recently built her house and she followed these guidelines even though she also had to include the flood water pass-through in the foundation. She agreed that abiding by the restrictions did effect things like ceiling height in the rooms however she did so and this applicant should do the same.

Mr. Smith noted that Ms. Sewell also submitted her concerns via e-mail.

Mr. Smith asked if there was anyone else who wished to be heard. There was no one and the Public Portion was closed at 5:20 p.m.

Mr. Smith summarized that the Board has a good understanding about what the Applicant wants to do. He also stated that the Board has expressed concern regarding the application material, primarily the presentation of information and lack of specificity in certain areas. He reiterated that this is an important case in that it involves the Resource Protection District and nearby

abutters.

Mr. Smith noted that per Article 5.2.B.1.b of the OZO, applications involving properties in the Shoreland Zone must be submitted to the Department of Environmental Protection (DEP). This was done by the Land Use Office however there has been no response from the DEP. Mr. Smith also noted that this application was submitted to the Land Use Office at the last possible moment before the submittal deadline, which did not give the Land Use Office and the DEP time to review the submitted material and the ability to respond.

Mr. Smith stated that anything that happens in the Shoreland Zone, particularly in the Resource Protection Zone, must get the proper level of scrutiny that it deserves.

In addition, Mr. Smith noted that he has not seen a FEMA Flood Map for this property. He would like to see these with regard to property building codes and specifications for the required vents and 3 foot clearance for water flow-through.

Mr. Smith would also like to see side by side; before and after elevation drawings with specificity regarding heights with clear cut numbers. He noted that for the Board to issue a variance it will need to be able to specify in feet and inches the exact amount of the variance.

Mr. Smith called for a greater degree of exactitude than what the Board was given.

Mr. Smith Moved to table this application to the August 13, 2020 meeting.  
SMITH/GRISWOLD

Mr. Smith called for discussion.

Mr. Heyland noted that DEP was notified however he anticipates that they may be as confused as this Board. He also pointed out that any new material submitted for DEP review would have to be submitted to the Land Use Office at least 20 days prior to a meetings date so that he can send it out within the required timeline.

Mr. Heyland also noted that the Ogunquit Floodplain Management Ordinance dictates that the lowest floor elevation ... is required to be 1 foot above base flood. This is a FEMA regulation which has been adopted by the Town. The current maps are from July 1992, there are paper copies in Town Hall; and it is the responsibility of the Applicant to procure and include them in the application packet.

Mr. Smith would like to have seen that in the application package.

Mr. DeHart added that he would like the height certificate to be stamped by a licensed engineer or surveyor.

Ms. Aaron agreed; and stated that there is not enough information, and what the Board did receive was not presented in a manner which would allow the Board to come to its own determinations. She would not be comfortable making a decision without more and clearer

information.

Mr. Mayer referred to the historic data for this lot. He noted that a portion of the lot was a portion of the Barrack Maxwell Wharf and has since been filled; and if that needs to be considered when determining the elevation datum.

It was agreed that this is outside the purview of the Board's consideration.

**Mr. Smith Moved to table this application to the August 13, 2020 at 4:00 p.m. meeting.  
SMITH/GRISWOLD 5:0 UNANIMOUS**

Mr. Smith summarized, for the Applicant's representative that the Board is looking for:

Elevation from a design professional showing what will be built with exact height differential between the existing structure and the proposed structure;  
A clear specification from the Applicant of exactly what he is requesting for a variance.  
Stamped height certificate of the existing building prepared by a licensed engineer or surveyor.  
Citation and specific FEMA and OZO regulations regarding the 3 foot rule.

**CODE ENFORCEMENT OFFICER BUSINESS** – None

**OTHER BUSINESS** – None

**ADJOURNMENT** –

**Mr. Griswold Moved to Adjourn at 5:45 p.m.  
GRISWOLD/DEHART 5:0 UNANIMOUS**

Respectfully Submitted

*Maryann Stacy*

Maryann Stacy  
Recording Secretary

*Accepted on August 13, 2020*