

BOARD OF ZONING APPEALS
TUESDAY, OCTOBER 27, 2009
These minutes are not verbatim

MEMBERS PRESENT: Rich Bayer (Chair), Dennis Keeler, Jonathan Berry (Associate), Fred Jay Meyer, Jim Thibodeau.

Members absent: Stan Given and Willie Audet.

Applications

Minutes from July and August moved to November meeting.

2nd item agenda complete.

Kurlanski application is tabled until January.

Mr. Levis said he will be ready in November.

Kathleen and Zbigniew Kurlanski - Are requesting a hearing to appeal a decision of the Code Enforcement Officer regarding parking in an unpaved area outside of the parking area at 40 Old Power House Rd, Portland Yacht Club, Parcel U16-083, zoned "RA". TABLED

Administration agenda:

All items appear to be complete.

Mr. Farris states the Kurlanski application may be tabled until January.

Mr. Bayer feels that the board could have some input from the towns' attorney on this application.

Council is here for the Kurlanski application and said they would be ready in November.

1) Robert and Laurie Pietroski – Are requesting Conditional Use approval under Section 6.2a to add a garage at 33 Hamlin Rd. Parcel U47-016, zoned "RB".

Mr. Thibodeau asked why is this application here, is it a non conforming lot?

Mr. Farris answered it is due to frontage and square footage.

Mr. Thibodeau stated there are no dimensions and the garage is shown closer to the road than the house. It is not a scale drawing. He asked Mr. Pietroski for the record, could you state it will not be closer than the 25 ft from the front setback?

Mr. Pietroski states he will not be closer than the 25 ft.

Mr. Meyer asked if the side will be 20 ft?

Mr. Pietroski answered yes.

Mr. Meyer said he did a lot coverage calculation and got 1800 sq ft total coverage. It's not 20 percent that would put you over, but do you know what it would be?

Mr. Peitroski answered he forgot to do this. The lot is 15000 sq ft. It is less than 20 percent.

Mr. Meyer states this is one detail that was missing.

Mr. Bayer opens comment to the public. Public comment closed.

Mr. Keeler motions to approve the application.
Mr. Thibodeau seconds the motion.
Mr. Bayer said Mr. Berry is a voting member tonight.
All in favor. Vote is unanimous.

2) Violetta Otis- Is requesting Conditional Use approval under Section 6.11 & 6.9 to demolish and rebuild a structure at 17 Foreside Rd. Parcel R02-001, zoned "RC".

Mr. Berry is a voting member tonight.
Ms. Otis presents her plans to tear down the guest house and possibly rebuild at a later date.
Ms. Otis understood she needed to come here for the shed house; the beach house is not a dwelling. It's never been used as a dwelling.
My understanding as per Mr. Farris is that this one did not need to come before the board.
Mr. Farris states there is no need for the board to address this one because 6.9 is for dwelling units.
Mr. Bayer said the board will disregard this part of the application. We will only address the shed cottage.
Mr. Bayer opens comment to the public. Public comment closed.
Mr. Berry asked Mr. Farris about the application asking for approval to take action now. Waiting on the ultimate action and whether or not we are reviewing the application and giving permission to do something in the future; and we have no plans before us. What impact this implicates grandfather status and if someone tears something down do they lose grandfather status? Does it all need to be done at one time?
Mr. Farris answered no that's the purpose of 6.9 to rebuild or the preservation of the rights to rebuild in the future. Because it is a nonconforming lot someone will have to come back to the board in the future for approval to build new.
Ms. Otis states for the record she has no plans to rebuild for the future.
Mr. Meyer states his only concern is the question on a time period. Mr. Meyer understood 6.6 to say that you lose a grandfathered use if it is discontinued for more than 12 months.
Mr. Farris answered that in a case where the board is approving this under 6.9, under guidelines from Bill Plouffe, it is preservation of rights. There has been no time line attached to it in the past.
Mr. Meyer would like to see this from Bill Plouffe and questioned the validation of a year time frame.
Mr. Farris answered where a case where a building permit should accompany a specific approval, yes.
Mr. Meyer said that it would create problems if you had an indefinite amount of time."
Mr. Farris said we need to rely on documentations in the parcel file which we rely on a great deal.
Mr. Keeler said he takes the same approach 6.6 is a 12 month time frame. Mr. Keeler advises the applicant that they may want to review the two provisions that if there's any chance in the future that they may want to rebuild. There are two reasonable

interpretations on whether 6.6 12 months trumps the 6.9 rebuild. We are not being asked to rule on this and I wouldn't want you to leave with the impression as a board this is how it works, we are not going there. If this is important you should have someone take a look at this.

Ms. Otis said it would be helpful if the request was in the records that it was approved under 6.9 and the conflict with 6.6.

Mr. Keeler said it would be approved under 6.9, but what would not be decided on is not in front us is the rebuild.

Ms. Otis understands. It only makes sense that a new application would have to come before the board.

Mr. Keeler asked if the cottage would need to be moved back if it were rebuilt.

Mr. Bayer reads the middle paragraph of the application states that this approval in no way jeopardizes the right to replace one or both of these structures at a later time. From our discussion this is not a guarantee we are making. There is no endorsement that is being made on the right to rebuild beyond the 12 months period.

We are approving the section 6.9 tear down and that's it.

Ms. Otis asked that approving this way it leaves it open to the possibility there could be a rebuild beyond the 12 months?

Mr. Farris said traditionally it has been that way. I'll get an update from Bill Plouffe.

Mr. Meyer moves to approve the application for the shed cottage subject to the provision that approval is limited to demolition, does not extend to the rebuilding of any structure in its place, and the Board takes no position on the issue of the ability to rebuild any structure more than 12 months after the existing structure is torn down."

Mr. Keeler seconds the motion.

All in favor. Vote is unanimous.

3) Jacques and Patricia Santucci – Are requesting Conditional Use approval under Section 6.2 for an addition at 24 Hideaway Ln, Parcel HL3-034, zoned "RBm".

Mr. Jacques Santucci presents his plans for the renovation.

Mr. Bayer opens public comment. Public comment closed.

Mr. Thibodeau asked how many bathrooms will be added?

Mr. Santucci said he will add 2 making it a total of four.

Mr. Thibodeau asked if the town has a copy of the new septic?

Mr. Farris answered yes.

Mr. Thibodeau asked why this application was under 6.2?

Mr. Farris answered it was non conforming because of the frontage and Mr. Farris said it should be under 6.2a because the expansion meets set backs.

Mr. Thibodeau asked about phosphorous control and Mr. Farris answered there is.

No view issues.

Mr. Keeler asked that the addition was no where near the property line?

Mr. Santucci answered correct.

Mr. Meyer asked about the elevation plans. No plans for this were in the packets.

The plot plan shows existing and proposed. Mr. Meyer reviews the plans and inquires about the shoreland zoning.

Mr. Farris said the existing structure is 160 to 180 ft from the water.

Mr. Thibodeau motions to approve the application.

Mr. Keeler seconds the motion.

All in favor. Vote is unamoius.

Subject: RE: Discussion of Practical Difficulty Variance

Summary by Rich Bayer:

We met last night and discussed this. We decided that the ZBA supports the Town Council's consideration of this new type of variance. We talked about several recent variance requests within the past two or so years.

The members felt this type of variance would be an additional helpful tool in addressing applicants requests.

Here is our view of the likelihood that the new type of variance would have changed any decision we have made within the past two or so years: The members opinions vary. The opinions range from "highly unlikely" to "there is the possibility on one or two" that we may have made a different decision.

However, there was a unanimous feeling that, if this new type of variance is adopted, some seekers of variances may misapprehend its scope and flood the ZBA with variance requests that really may still not have merit.

I have included all members of the Board in this reply so that any member who wishes to may respond to you directly about this issue.

Rich Bayer, Chair, ZBA