

February 13, 2002

Phippsburg Planning Board

REGULAR MEETING

Board members present: Marie Varian, Chairman; Steve Thayer; Josh Bate; Bruce Kaake; Marion Hebert. Codes Enforcement Officer, Lee Rainey, was also in attendance.

Varian called the meeting to order at 6:00pm and a quorum was declared. She announced that, during the month of February, Kaake had been appointed by the Selectmen as a full member of the Planning Board finishing out Ed Burke's term in 2004 with Burke appointed as an Alternate finishing Kaake's term..

The first item on the agenda was to hear from Anna Little. Varian stepped down as Chairman due to conflict of interest as the applicant is her daughter and Hebert acted as Vice Chairman.

Little wishes to relocate a structure located on the Main Road (Map 7, Lot 28), relocate and expand the non-conforming structure by 30% and discuss the change of use. The property is zoned Resource Conservation which requires a 125 foot setback. Her application was accompanied by a diagram of the existing structure and proposed expansion and another diagram depicting the lot layout with road and water frontage. She explained that the structure is currently 56 feet from the marsh and would be moved back one foot. It would also be two feet further from the centerline of the Main Road, increasing the distance it presently sits from existing boundaries, therefore making it more conforming.

Little explained that she would not be asking to activate an existing septic system, but would have an incinerator toilet or portable system. She further explained that she has no intention of staying in the structure on a long-term basis, but would use it only on occasional weekends. Asked if there is electric power on the property, she replied that there is not, but that she would like to reactivate it.

Bate asked when the previous owner had vacated the property. Little answered that in the mid-80's, a trailer at the site had burned and was removed. The structure in question was left standing, but has not been occupied since that time. Bate referred to the Shoreland Zoning Ordinance Section 12.D.2 under Non-Conforming Uses, entitled Resumption Prohibited. A portion of this Section applies to residential structures. Little stated that she had read this section of the Ordinance and that she is asking to do as much as she can possibly do in compliance with the Ordinance. She further explained that it is obvious that people have been staying in the building on occasion, and that she has cleaned out and disposed of debris that would prove this.

Varian, speaking from the floor, pointed out that Section 12.D.3 regarding Change of Use, states that “the former use is determined by the Planning Board”. Bate suggested that an interpretation from MMA would be helpful in determining if this should be considered an abandoned structure, one used for storage or, since it has obviously been occupied occasionally within the past five years, a residential structure. Rainey agreed that this would be a good solution. He will contact MMA for this decision.

It was agreed that the 30% expansion and relocation of the structure could be addressed by the Board. Little requested that the Use of Structure be removed from the Application and would be dealt with pending a determination by MMA.

The Board unanimously voted to approve the expansion and relocation and the Application was signed by all members with the following comment “(a) Expansion from 102 SF to 133 SF, (b) volume from 868 cubic feet to 1128 cubic feet. Approved relocation as attached. Use of structure deleted.” The \$20 fee was paid.

Varian rejoined the Board and the January minutes were approved and accepted. She advised the Board that the State is having public hearings on two more bald eagle nests, one in Parker Head and one in Winnegance. She explained that once the places are designated as a habitat, the area will be protected from construction and development during certain nesting dates.

Rainey apprised the Board that the clear cutting case involving Eric Taylor of the Fred Brigham Road (Map 37, Lot 40) is now going to court. He added that he expects to be called to testify. He also advised that he has issued a stop-work order on the property of Warren Hudson of Cox’s Head (Map 13, Lot 55). He stated that it appears the owner is making the foundation into living space.

The Board was joined by members of the Board of Appeals and the three Selectmen to discuss possible Ordinance amendments regarding abuttor notification and driveway setbacks. The importance of a consistent method of notifying abuttors was discussed. Board of Appeals member, Tom Cashman, stated that this should be done by Registered or Certified mail in order to leave a paper trail. He further stated that notification in the local paper is not adequate, since many abuttors are in town only on a seasonal basis.

Selectman, Mike Rice, suggested that this is something that could be crafted and an amendment put in the Town Meeting. He agreed that the Ordinance is very vague on this subject and not serving all the parties well. Selectmen Wells and Douglass agreed that there have been problems in the past regarding this.

Varian advised of the Planning Board’s method of notification to abuttors in a Subdivision situation. David Thombs, Chair of the Board of Appeals, asked Varian if

this was done only in the case of Subdivision. He further stated that in any other case, in his interpretation, it was the responsibility of the applicant to notify the abutters and the Board would verify that prior to a meeting. Varian affirmed this, advising that the Planning Board has no proof of anything other than the applicant's word. She pointed out the vagaries of the wording regarding Business Permits which states that the abutters will be notified before a business starts and advised that the Planning Board has adopted the policy that when an application is presented and the applicant has his original hearing the Board will ask and require of them to notify the abutters before a Business Hearing is conducted. She added that there is nothing in writing to make that mandatory, nothing that states they have to do that in writing, and nothing that says it has to be done by Registered or Certified mail. She further stated that, in some instances, an applicant has come before the Board with a letter signed by abutters, although there is no proof that the abuttor actually did sign that letter.

Wells stated that there would be changes in the Ordinances with the completion of the Comprehensive Plan. Varian replied that, in her opinion, the Boards should not wait for the Comprehensive Plan, that some kind of wording could be accomplished at this point.

Thombs cited instances where an applicant has come before the Board of Appeals for a variance in which, although the applicant has stated that all abutters have been notified, in fact they had not. Cashman stressed the need for consistency in dealing with this matter and also the need for the abuttor notification to be in writing to preclude the possibility of a future legal problem. Selectman Rice agreed, stating that the situation, as it stands, is not serving all parties well.

Discussion ensued as to whether first class mail, Certified or Registered mail with a return receipt was the best means of handling the notification of abutters. Selectmen Douglass noted that, with the high rate of seasonal residents in town, Certified Mail should ensure their receipt of notification and would show best intent on the part of the applicant.

Thombs read MMA's response regarding this issue which stated that "The Board shall reasonably notify the petitioner, the Planning Board, agency or office and the Municipal Office of any hearing. These persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed in any hearing." Rice replied that the Boards are now trying to determine what is 'reasonable'. Thombs agreed, stating that the Town Ordinances are much more restrictive than what the State mandates.

It was discussed that if a form letter was presented to abutters for signature, should the Boards operate on good faith that the proper people have signed the form. It was determined that notification by Certified Mail would protect all parties and serve as a

viable paper trail for any future problems. Varian stated that it becomes incumbent upon the applicant and, in theory, the applicant would go through Town Hall records to determine who the abutters to his property are. He would then be provided a form to fill out and make as many copies as are needed of it, and would send the form to each abuttor by Certified Mail. It was agreed that it would be permissible for the applicant to personally seek signatures.

Thombs stated he has personally called the abutters prior to a case being presented to the Board of Appeals. He added that the 20 day waiting period, the notification of a pending case being published twice in the local paper 7-14 days prior to a meeting, has got to be removed from the Ordinances due to the fact that it is too long a waiting period, as well as being too costly, for an applicant.

Selectman Douglass asked what the procedure is regarding expansions and variances being recorded at the Court House. He was advised that variances and subdivisions are recorded and he then asked if someone was expanding 30% in a non-conforming situation, which Board would hear that case. Varian advised that that situation would come before the Planning Board, but the Board has not been recording expansions in the Court House and, in her opinion, the applicant has not been doing that either. Douglass asked if this would not be a good idea so that anyone buying a property which has been expanded would have notice that they cannot expand again. Varian explained that the Codes Enforcement Officer would have information of an expansion in his files. Douglass advised that, if an expansion was recorded, a prospective buyer would have access to information prior to the time of purchase and could not claim that they did not know. Wells suggested that this become part of a valid Planning Board Permit and the applicant be mandated to record this expansion within 14 days. Board of Appeals member, Storrs Bigelow, advised that an expansion should become part of the deed just as a variance is. Varian referred to Section 12.C.1.a of the Shoreland Zoning Ordinance and advised that wording could be developed regarding this issue and added to that section of the Ordinance. It was the general consensus among all Boards that this would be feasible.

Rainey advised the Boards that within the next few months he will have all the permits for the past 11 years done by Map and Lot.

The on-going problem of building setbacks from roads was brought up. Thombs advised that 50% of cases before the Board of Appeals are requests for variances due to the Ordinance limitations regarding these setbacks. Section 2.5 of the Land Use Ordinance entitled "Lot Size" was referred to and it was agreed by the Boards that, in certain situations, the criteria is too restrictive. To better satisfy the needs of the Town, it was agreed that an amendment to the Ordinance is in order. It was decided that a 75 foot

setback on State and Town roads and 50 foot setback on private roads (both being from centerline of the road) would be satisfactory. The Boards will work on wording with help from the Town Office.

The meeting was adjourned at 9:25pm.

Respectfully submitted,

Marion J. Hebert
Recording Secretary/Planning Board Member

February 19, 2002

Dear Ed,

Am enclosing minutes, etc. of meetings going back to November. I wasn't in attendance for awhile and don't know what was forwarded to you. God forbid that you ever think you have been forgotten. You don't know how much we miss you and the expertise you have always brought to this Board.

I do hope your health is well. Am still going through the back problem as well as the pinched nerve in my neck and arm. I keep telling myself that it could always be worse.

We miss you, Ed, and certainly hope to see you in the near future.

TAKE CARE!

Best wishes,

Marion