

July 14, 2004

Phippsburg Planning Board

REGULAR MEETING

The meeting was called to order at 6:00pm. A quorum was declared.

Board members present were: Marie Varian, Chairman; Steve Thayer; Clifford Newell; Bruce Kaake. Code Enforcement Officer, Lee Rainey, was also in attendance.

**RICHARD GALLAGHER**

The Board first received an application from Richard Gallagher of 29 Wallace Circle in West point (Map 27, Lot 58). Gallagher first came before the Board in 2003 with an application to construct a small deck on the rear of his non-conforming house which, also, is on a non-conforming lot. The Board conducted a site inspection at that time. The application was discussed at the board meetings and abutters voiced objections through their attorneys, claiming that one property line ran under Gallagher's westerly "porch" section. In November Gallagher requested the application be tabled until spring.

He came back before the Board in June of this year. It was discussed that if what the Board has previously deemed a "parking lot" is not maintained as such, under Shoreland Zoning Ordinance Section 15.B.4, Gallagher would free up 103.68 square feet. During this meeting he presented a diagram of the proposed deck and advised the Board that the deck will be no more than 104 square feet. Gallagher had previously presented the Board with copies of previous deeds and surveys which have been conducted on the property.

The Board referred to Section 12.C.1.a of the Shoreland Zoning Ordinance which addresses a 30% expansion. Varian explained that, according to DEP, a parallel expansion is allowable. She further stated that there has been a lot of controversy over where the lot line is on the property.

Roger Therriault, Attorney for the abutting Wallace family, stated that, in his opinion, there has been some misconception regarding the 30% rule. He further advised that there are violations in the setback requirements from the abutting properties and that the Ordinance states that a non-conformity cannot be increased. He stated that he knows of several surveys that have been conducted on abutting properties and none of them agree as to where the property lines are. In working with Gallagher's mortgage sketch, Therriault advised that he came up with significantly less than 6,000 square feet which is on the tax records. He added that, if there is a lot coverage issue, the Board needs to be very precise in exactly how much square footage is on that lot before any construction commences and stressed the need for more investigation.

Varian advised that MMA and the Town Attorney had been contacted last year regarding the Gallagher case. MMA's opinion was that something could not be made more non-

conforming and that it is the Board's decision whether or not that would be the case. She added that the Town's Attorney felt that Gallagher had presented enough information to show that he has right, title and interest in the property and enough information for the Board to make a decision so that the case would not be held up any longer.

Kaake pointed out that none of the documents and surveys that Gallagher has presented to the Board are certified and, therefore, not legal documents. He again recommended that Gallagher have the property surveyed. Gallagher countered that even if he did go to the expense of having a survey conducted, it could still be contested. He requested that the Town survey the property and give him an accurate square footage and added that if the figures on the tax map reflect that he has 6,000+ square feet and that is incorrect, that he has less, it is up to the Town to determine what the correct figures are, that it is not up to him. Kaake advised Gallagher that it is up to him to prove that he actually does have 6,000 square feet. Newell stated that without a certified document proving how many square feet is being dealt with and without that the Board's hands are tied.

The Board unanimously tabled the issue until August.

### **BILL HOWELL - PHIPPSBURG LAND TRUST**

The Board next received an application from Bill Howell representing the Phippsburg Land Trust. The application requested an "8 square foot sign size for entrances to the Phippsburg Land Trust properties. Signs would be dark green and white lettering. They would state the property name and either the owner's name or the words Phippsburg Land Trust. They would be at least 5' off any road and at the entrance of parking area for the property and trails. Similar to Cooley Preserve property." Howell requested a variance from the Phippsburg Land Use Ordinance.

Varian referred to Section 3.7 of that Ordinance and the Board discussed and determined that none of the criteria in that Ordinance allowed approval of this application. The application was denied with the following comment: "The Planning Board does not have the authority to give a variance for a larger sign than is allowed in Section 3.7 of the Phippsburg Land use Ordinance." He was advised that he could present the application to the Board of Appeals.

### **MARK WILSON**

Mark Wilson of the Meadowbrook Road (Map 35, Lot 1-01, zoned Resource Conservation) next approached the Board with an application for a lesser setback. He first approached the Board in May and again in June. A site inspection was conducted by

the Board on the property. Section 15.B.6 of the Shoreland Zoning Ordinance was referred to. The Board had denied Wilson's application in June because it was determined tht there was not 10,000 square feet of suitable soils for a septic site.

The application stated: "Reference Parcel 'D' on Plan 28/80 Sagadahoc Registry of Deeds. Structure is 26 x 26 cottage on full concrete foundation. Overall height is +/- 30 ft. 2 bedroom. Less than 1,000 sq. ft living space." The Board of Selectmen has granted Peter Hutchinson (present owner of the land) a utility easement to cross Meadowbrook Road from the proposed construction lot to the proposed location of an easement site to accommodate suitable soils criteria required by Shoreland Zoning Ordinance Section 15.B.6.2.

The application was accompanied by a letter from Site Evaluator, Albert Frick, dated July 14, 2004 which stated that there appears to be a total area of suitable soil in excess of 10,000 square feet.

The Board unanimously approved the application and it was signed with the comment: "Town of Phippsburg utility easement will become part of this approval and recorded at the Sagadahoc Registry. Utility easement will run under the Meadowbrook Road."

The \$20 fee was paid.

**NICHOLAS GILLIAM**

Donald Gilliam, representing Nicholas Gilliam of 460 Sebasco Road (Map 31, Lot 7) presented an application requesting an "11' 2-1/2" x 22'-1" addition for kitchen, squaring off back left hand side when looking at house off the road." The application contained a diagram of the existing house and the proposed construction. The following footages were determined by Codes Enforcement Officer, Lee Rainey:

The existing square footage is	890.4
The existing cubic footage is	8,575
Allowed square footage is	267.0
Allowed cubic footage is	2572.5
Proposed square footage is	249.33
Proposed cubic footage is	2,244
Square footage left over	17.832
Cubic footage left over	328.515

The house is non-conforming because it is too close to the road. The addition will not go closer to the road - it will be on the back side.

The Board referred to Section 2.11 of the Land Use Ordinance. The application was unanimously approved with the comment "Permit will be recorded at the Sagadahoc Registry of Deeds" as well as above footages. The \$20 fee was paid.

**EARL WALLACE**

Richard Wallace, representing Earl Wallace of Carrying Place Road in West Point (Map 27, Lot 81-01, approached the Board with Wallace’s request to relocate a wharf. The approval form from Harbormaster, Doug Alexander, was presented, but it was neither filled out or signed. Varian advised that the The Harbormaster form must be part of the application She referred to Section 15.C of the Shoreland Zoning Ordinance which addresses docks, piers, etc. Discussion ensued about increasing the size of the dock and other possibilities that might be available under this section. Wallace was advised to supply a sketch showing the proposed location and footages. The application was tabled until August.

**DON HILL**

The Board next accepted an application from Donald Hill of 58 Water Cove Road in West Point (Map 28, Lot 13, zoned Village District). Hill’s application requested to use a percentage of the allowed 30% expansion rule to construct a 3’ x 22’ expansion on the south side of his non-conforming building.

Varian referred to the Shoreland Zoning Ordinance Section 12.C.1.a. Rainey has measured the square and cubic footage. An application for an addition in 1987 for a variance was presented to the Board of Appeals and was denied because the proposed addition would be too close to the water on the south and west sides and would be too close to the sideline.

Hill told the Board that the proposed expansion would be on the south side Rainey explained that the existing chimney is half in and half outside the house and that Hill would like to get a roof all the way around the top of the chimney because of leakage. He stated that the construction would not go any closer to the water.

The Board approved the application with the following comments: “This permit will be recorded at the Sagadahoc Registry of Deeds.

Existing footage	858.0 SF	8174.833 Cubic Feet
Allowed	257.4 SF	2452.45 Cubic feet
Used by this		
Permit	69.5 SF	943.25 Cubic Feet
Footage Left		
Over	187.9	1509.2 Cubic Feet

Per 12.C.1.a of Phippsburg Zoning Ordinance.”

The \$20 fee was paid.

**TRUMAN AND GAIL ROBERTS - SUBDIVISION**

The Board next received a Final Plan from Truman and Gail Roberts (Map 44, Lot 8) for their four lot “Sonshine Acres Subdivision.” They had presented a Sketch Plan in June which was deemed to be incomplete. A site inspection was conducted on June 23. Originally the application requested a three lot subdivision. Since that time, the Roberts

decided to include their son's lot in the Plan, making it four lots. The Roberts' recognize that the son's lot could have claimed exemption status.

The application also included deeds relating to the properties, a copy of the Town of Phippsburg Assessors Map 44, a USGS map showing the subdivision area, survey conducted by Ron Beal, a Flood Insurance Map and a letter from the Roberts' son, Kenneth, which stated that he has no objection to the subdivision plan and that his lot will not be subject to the Covenants. That letter will become part of the record. Kenneth inadvertently had not been officially notified of the Subdivision Application.

The Board referred to Subdivision Ordinance Sections 6.3. and 10. Varian stated that when the subdivision was changed from three lots to four lots, she did not renotify the abutters and present Subdivision lot owners because none had objected when they received notice of the original Subdivision Application.

The need for a Public Hearing was discussed by the Board and it was decided that one was not necessary.

The Subdivision Plan was accepted as both Preliminary and Final.

The application was deemed to be complete and a motion was made to accept it with unanimous approval by Board members. The mylar and copies were signed. The \$200.00 fee was paid.

### **NAT NORTON**

Nat Norton of Little Cox's Head (Map 13, Lot 53, zoned Resource Conservation) next approached the Board to discuss his desire to build a cottage on land which has been family-owned for many years. Two adjacent lots are being sold by the family. He explained that he is not going to be able to meet the required 250 foot setback and asked the Board what he should bring to make an official request for permission to build a cottage on that piece of property. He advised that there are just under two acres of land.

Rainey advised that he has visited the property and said that this is a lot of record. Norton stated to the Board that he has had Land Use Consultant, William Maier, visit the site to

determine where on the property there are the required 10,000 square feet of suitable soils under Shoreland Zoning Ordinance Section 15.B.6.a..

Varian advised Norton to make out an application requesting a lesser setback in the Resource Conservation zone. This will be presented to the Board in August. She explained to Norton that the Board may not be able to approve the application due to Ordinance restrictions and that the Board cannot give variances, but the Board of Appeals

can address variances upon denial by the Planning Board.

The June minutes were approved.

Ordinance amendments for Mother-in Law apartments, the need for 10,000 square feet for septic areas in the Resource Conservation Zone lesser setbacks, campgrounds and conflict with sign ordinance wording was discussed. She presented an informational amendment from the West Bath 2003 Town Meeting which spoke to the Temporary In-Law and In-Law Quarters. She advised that she has requested the town of York to send a copy of their Ordinances regarding campgrounds. Newell suggested that a workshop would be in order to review these issues.

The meeting adjourned at 9:45pm.

Respectfully submitted,

Marion J. Hebert  
Recording Secretary/  
Planning Board Member

### **Transcript of Planning Board Discussion with Richard Gallagher on July 14, 2004**

Varian: The first item on the agenda is Richard Gallagher of 29 Wallace Circle in West Point, Map 27, Lot 58 This is a non-conforming lot and a non-conforming structure. He would like to construct a deck on the west side of his building using the 30% expansion rule. This application first came to us in 2003. It went up to about September or October and was tabled for the winter and came up last month and we are addressing it again tonight. The original application was in two parts, one part for a dormer and one part for

a deck. The dormer was approved last year with no problem. I want to double check with you, Mr. Gallagher. This diagram shows the proposed deck going from the corner of your enclosed porch to the southwesterly corner of the main part of your house.

Gallagher: Yes. The triangle that you show there is 104 feet. It probably would come more in like that, but it would be within that line.

Varian: All right. When we were down there for the site inspection and, I guess, Bruce had mentioned possibly doing a kitty-cornered deck like that, we were looking around the cellar door. Is that where you are thinking of now?

Gallagher: Right around there.

Varian: And are you thinking of starting at that further corner?

Gallagher: Yes, and probably cutting in. That's my intention.

Varian: The paperwork that you have sent to us doesn't show the exact footage for that (unintelligible).

Gallagher: No, it doesn't because I wasn't really sure what it would look like. But, it will be no more than 104 square feet. It will not be outside that diagonal line that goes from corner to corner.

Varian: There were questions last year about property lines and in your packet you had given us copies of deeds from prior owners and you had given us copies of surveyed plans that others had had. Unless there are changes in any of your paperwork, we will assume that this is all part of the present packet. Comments now? Questions now?

Kaake: Are we going to need the square footage for the deck to continue on?

Rainey: You have already got all my numbers in the original package.

Kaake: With it going kitty-cornered like that? With it being cut like that?

Gallagher: I'll come up with a thing to show you how 104 square feet will work on that.

Varian: Your original application asked for a rectangular deck.

Gallagher: Yes.

Varian: Probably using 250 square feet. You were allowed 485.6499 square feet and you feel that your proposal tonight would not be over 104?

Gallagher: That is right and I'll do the geometry on that and give a picture, design, of what it will look like.

Varian: Comments from the Board? Any questions from the audience at this minute? the next phase of this is, it was brought up that there was also another stipulation in the code that prohibited over 20% of the lot size to be used for parking lots, buildings, etc. This is a picture of the lawn. We were discussing last Fall a parking area, or a parking lot, and we were discussing whether the fact that the grass growing on the lawn and parking on top of it constituted a driveway or a parking area. This picture shows us that grass is growing on the area where somebody would normally drive off Wallace Circle and park.

Gallagher: And that was taken in May so it is a lot greener now.

Newell: It looks vegetated to me.

Varian: OK. So, we would have two sections to talk about. Section 12.C.1.a of the Shoreland Zoning Ordinance would be the section that would address a 30% expansion. The footage, at this point we are saying not to exceed 104, is well within the limits that would be allowed for an expansion. The question is, can it be allowed where this is non-conforming? The house is too close to the property line and the house is too close to the road, but that is not the section that we are worried about. A kitty-cornered deck does not go closer on the paper to the property line and does not go closer to the water. It may aggravate a situation but, when we were checking with DEP last year, a parallel expansion was allowable in their eyes. There was a lot of controversy over where the lot line is and Mr. Gallagher presented several survey copies and the outline of the house as is shown on this diagram and this drawing shows where the deck would be built and it does not go beyond any one of the measurements of the present layout of the house. The question we have to wrestle with is this allowable under the Ordinance. The second question is the parking area and how much of the lot is covered by lawn vegetation.

Kaake: On the driveway. I understand the deck part. What was the issue on the driveway? Is that in terms of the lot size and how much can be covered and how much can't be?

Varian: Yes. That's Section 15.B.4 which says: "The total area of all structures, parking lots and other non-vegetated surfaces within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof located within the Shoreland Zone including land previously developed except in the general development district", which this is not.

Kaake: So, the issue is that the driveway is not being used because of the vegetation that's covering it? Is that the point that he is trying to make?

Gallagher: It's not a driveway. It's just a lawn.

Thayer: But, it will be used for parking?

Gallagher: No. I'm not using it now as parking.

Kaake: And you park across the street?

Gallagher: I park on the street which everybody does down there.

Varian: It would not be your intention not to park?

Gallagher: I might unload some things.

Varian: But it is not your intention to use it as a driveway day in and day out?

Gallagher: No.

Thayer: Even if you have a lot of guests? An overflow?

Gallagher: Only on the weekends. Sometimes the kids come up, sometimes they don't. But, there is on-street parking and Scott has volunteered his parking spaces.

Varian: I would not like, personally, to sit here as a Planning Board member and say nobody can ever drive a car on their lawn. I think that's too much Big Brother.

Thayer: I'm just curious what the.....

Varian: It doesn't say. It doesn't say that you can't do it. They are talking about parking lots and other non-vegetated surfaces. It doesn't say anything about now and again, once in awhile, once a week, or anything like that.

Kaake: Would this get recorded with the deed? Will this get filed?

Varian: The 30% section would and, if it's all on the same permit, any restrictions would show.

Kaake: ...would be noted. OK.

Gallagher: Well, I can't even expand a full 30%. This is a 20%.

Kaake: No, I was just thinking down the road that if somebody says "Well, I'm going to make this into a driveway", there will be some kind of control there.

Newell: The pictures clearly show to me that that is a vegetated area. If somebody wanted to go in there and pave it, I think we would have every right to turn them down on that.

Varian: Any questions?

Therriault: We have some comments, but no questions at this time.

Varian: We would entertain your comments at this point.

Therriault: There are several things Madam Chairman and members of the Board. My name is Roger Therriault. I represent the abutting owner, Don Wallace. He owns the property to the west and the south. I think there has been some misconception with respect to the 30% rule. I think the Ordinance states that the 30% rule applies where the structure is within the setback from the water. (unintelligible). This building is not in violation of that. What it is in violation of