

August 11, 2004

Phippsburg Planning Board

REGULAR MEETING

The Planning Board meeting convened at 6:01pm. Members present were: Marie Varian, Chairman; Marion Hebert; Steve Thayer; Clifford Newell and CEO, Lee Rainey

JOHN WOOD - WAT-TUH LAKE SUBDIVISION

The Board first met with Surveyor, John Wood, representing the Wat-tuh Lake Subdivision in Sebasco (Map 30, Lot 21). Owner, Mrs. Dabney, wishes to make an amendment to the existing Subdivision to split what is presently the homestead lot. An after-the-fact amendment involving a "sliver" of land exchanged with Sebasco Harbor Resort on 6/9/02 was approved on 9/10/03, but no survey was done. Wood advised that he has drawn a proper plan as the Subdivision now exists. Dabney would like to set off four acres and leave seven acres with the homestead lot. He stated that the new lot would be well back from the lake and meets all dimensional requirements. A provision on the original Subdivision states that the lots will not be further divided. The soils tests on the property have been conducted. A site inspection will be conducted on 9/1/04 @ 5:30pm and letters will be sent to notify the abutters.

RICHARD GALLAGHER

The Board was next approached by Richard Gallagher of West Point (Map 27, Lot 58). Mr. Gallagher has been before the Board a number of times in the last year. The Board approved the construction of a dormer in September 2003, but tabled Gallagher's proposed construction of a deck on the west side of his building, which is on a non-conforming structure on a non-conforming lot, in November 2003. Gallagher again approached the Board in June and July of 2004 to further have discussion regarding the deck.

Varian stated that there has been a lot of correspondence and a letter has been received this date from Atty. Roger Therriault who is representing abutters to the Gallagher property. She advised that at the July meeting Gallagher presented a mortgage sketch which showed a drawing of the property per the deed description done by a Mr. Spivey. This drawing was not done as a survey, but as a mortgage sketch. She further stated that the Town is assessing Mr. Gallagher for more land than this mortgage sketch shows. Since the July meeting, Mr. Gallagher has talked with the Town's Assessor about any changes that might be made if that is the truth. Varian added that the Town's Assessor cannot accept a mortgage sketch because it is not a survey, it is a tracing of the lines on a deed. The Board, at this point, does not have a survey of Gallagher's land. Gallagher has asked the Board to take the Town's recorded lot size, let it stand the way it is and proceed to decide whether or not he can have the deck.

The Town shows 6,098.4 square feet and the sketch shows some 4,000 square feet.

Gallagher read a letter he had written to Varian. It stated:

“Following the July 14 meeting, I contacted the Town Assessor to inquire about a tax abatement on my property on the less than 1.4 acres indicated on the town records. I FAX’d her a copy of the mortgage sketch of which you have a copy and we discussed it at length. She indicated that the State Constitution prevents her from changing the area without compelling evidence that the lot size is different than what the records show. While it may appear that my lot is less than the .14 acres, she feels that a mortgage sketch is not sufficiently compelling for her to make the determination to officially reduce the size. Her reasoning is that, relying on a mortgage sketch which contains many disclaimers, would set a precedent that would could well cost the town significant tax problems in the future. As you are aware, there is no definitive survey of my property that would provide acceptable compelling evidence. To have different town agencies utilize different lot sizes for different purposes is obviously unfair to any town resident. as the Town Assessor is unwilling to reduce my lot size using available information and as it it not the Planning Board’s role to determine lot size, I submit that the Board should recognize the lot size of .14 acres that is indicated in Town records. This will allow approval of that of which I have applied.”

Varian stated that Atty. Roger Therriault sent her a FAX stating that his office represents Don Wallace, an abutor on two sides of the Gallagher property. She read the FAX and it is on file in Town Hall. Therriault concluded the letter by stating “Based on the foregoing, and our surveyor’s calculations, Mr. Gallagher’s proposal to add a deck to the front of his structure would constitute a violation of the lot coverage requirements of the Town Ordinance and be beyond the authority of the Planning Board. On this basis, his application should be denied.” Varian went on to say that when the lot size was figured, based on the Town’s figures of .14 acres, it was 6098.4 square feet. She added Gallagher has allowed a prior driveway area to grow so that it would be vegetated and free up some land. The current structure is using 1114.83 square feet and the driveway would have been about 104.8. All these figures pertain to Section B.4 of the Shoreland Ordinance which discusses 20% coverage of a lot with non-vegetated structures or areas. She opened the meeting up to comments or questions and added that advice has been sought from the Town Attorney and Maine Municipal Association. so that the Board would have a feeling of the basis, the Codes and law regarding the case.

Gallagher commented that it does appear that his property is small, however whatever he has available to him, or what the Town has available to allow him to get tax relief on it. He added that he does not think how the Town can treat that property differently.

Varian stated that one of the questions the Town Attorney had was that Mr. Gallagher has proof of right, title and interest in this property. She added that nobody is questioning

that point. She further stated that the Board's problem at this point is conflicting information and that the Board does not have the authority to settle property line disputes or to settle any arguments in that direction. She advised that the Board cannot give variances and has to go by the Ordinances.

Newell stated that the Board is being asked to make a decision on something that it has no proof of. "Gallagher's lot size is different from what the abutters feel it is" He added: "I don't know what your lot size is. You are asking for us to give you a ruling based on an unknown. It's time for a survey. It's not up to us to decide who does it. If the abettor turns around and decides that, say we gave you an approval, and the abettor decides that to have a survey and their survey says that they were right, where are we? To date, we have not received an approved, certified survey from anybody on this. I am sympathetic that your tax map shows a number and a lesser number is in question. I have no answer for that. However, I believe that the Board has given this due consideration and our hands are tied until we see an official document. It's time for a full court press from some direction and we are not the ones to do it."

Gallagher: I can't spend \$2,000 or whatever it costs to do a survey. If I were saying that my lot was bigger and I had more property than what the tax maps said and tried to apply for something based on that, then the default would be 'We cannot accept that. We have to go by what the Town has said.' The Town has said, and it was last reviewed in 1999, and all this land stuff goes back to the 1940's, so for over 60 years this property has been considered to be, and taxed at .14 acres Now, that is what the Town is calling it. I think it is unfair for the Town to now say, 'well, you might be taxed at this, and it might be considered that, you might have bought it at that but, because somebody says it's not, we're going to make you spend money to prove what the Town has said is there in the beginning. I just don't think that that's right. I really don't. I think I have tried my darndest to respond to all these things, but I don't think I should have to defend what the Town has on its books.

Varian: I don't think you should have to defend it either, as such. But, there is nothing that says the Town's tax maps are totally accurate. They are what they are. They have been drawn out based on deed descriptions all through the years. If there are errors, they would be picked up somewhere along the line by maybe a court case, maybe a case that had a survey as opposed to one that didn't. We would go in one way by the figures because that's all we have for starters. But, at best, we can't say that they are accurate.

Gallagher: I'm sure that you can't say that they are accurate. I'm sure that if you look at every piece of property down there, or many in the Town, you couldn't say that they were

accurate. But, that's what we have to go on. That's what I have to go on, that's what the Town Assessor has to go on and I think that's what the Planning Board should go on.

Hebert: Dick, if I was going to spend that much on a piece of property as you did, I damned well could spring for 1500 bucks to have it surveyed and, until you do, we can't move. I'm sorry. I wish we could, Dick. We are not trying to hold you up.

Gallagher: Well, when I looked at it I thought it looks like less than the 6100 and so I called Juanita and I said "If it turns out to be...." and she said "I can't do it." So, therefore, I'm going to have to pay a couple of thousand dollars to determine that the land that I have is going to prevent me from having a deck.....

Hebert: Well, if you want your deck that badly, Dick, that's what you have got to do. And, if that survey proves what you have got, you are holding several surveys, if it proves 100% accurate, by God, you can have your deck."

Gallagher: We have in West Point, as you are probably well aware, we have many people who have done many surveys and the same individuals involved and say 'that it is not a good survey' and it has been held up because they would not accept the results of a survey that they did.

Hebert: Well, I think that if we had several corresponding surveys that proved the same thing.....

Varian: We were going along with the Town's figures last summer and fall as we were discussing, even though this mortgage sketch had been presented and, I'm going to say that nobody on the Board took those measurements and figured them out.

Gallagher: But, you see, that is not the Board's position.

Varian: No, it is not the Board's position. But, what is there is there.

Gallagher: No.

Varian: Yes.

Gallagher: The Town, the Assessor's Office has me paying taxes on that.

Varian: But, that is not our problem. We can't do anything about what you are paying for taxes. We, as a Board, can't do anything about the footage that you're being taxed.

for. If we look up in the records what a person has, which is how these figures came about last Fall, that is what we would go by, too. If we had a survey, if it was controversial, we had a survey, we could pick off those figures if some surveyor had already done it, we would have that. In this case, we had the papers, surveys of types that

had been done by other people, for other people, but not for you. We are in the position now where you have to prove what you have and the papers that you have given us don't really prove that. They prove where a pin may be here or there, but they don't say anything about square footage on your lot. This can't be used by the Assessor. It can't really be used by us either, other than a pretty good diagram.

Gallagher: Where did the Assessor get her figures?

Varian: From deeds that have come in from times gone by.

Gallagher: It just doesn't make sense to me.

Varian: That particular thing might have been the fault of an Assessor I don't know how many years ago. If this acreage has held for forty, sixty, years somebody made that mistake all those years ago and, if the same deed has changed hands every time that it has changed hands, it followed along. If Albertina had it for those sixty years, then there was never a reason to do anything else so it stayed right in there. Nobody would change the records unless they had the proper survey that makes the Assessor change the records which isn't up to us. We have been struggling with this for months, you have been struggling with it. You have been trying to get a little deck which seems so small in the overall scheme of things. We have to rely on the papers we have, you have to prove what you do have for footage. We don't have it. We have the drawing which isn't sufficient. We have the Town's record which isn't sufficient and proper as it's turned out and we have nothing else to go by. We don't have the information we need that I can see. If somebody else has anything, bring it up. Do you have anything Lee or Steve?

Rainey: No. You just said it. The onus of proof is on the applicant. The only thing that we have that was given to us as part of this application to prove that the building is within the property lines also points out that there is less land there than the Town is assessing for which has nothing to do with the Planning Board anyway.

Varian: We can take a vote. Do you have any other comments at this point?

Gallagher: No.

Hebert: I make a motion that, unfortunately, that we have to deny this application based on the fact that we don't have all the facts and we cannot, according to the Ordinance, make a non-conforming structure more non-conforming.

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Newell seconded the motion.

Gallagher: I have a question on that. Non-conforming structure more non-conforming? In what regard. Not because of the footprints of the thing, but because of the size. Is that what you have determined?

Varian: All in favor of the motion which is a denial?

Unanimous vote to deny.

Varian: I would say that if you want to pursue it, to get in touch with David Thombs, Board of Appeals, and see what they can do and all of these records would be available to them because they do have the authority to override the Planning Board.

Gallagher: I'll probably touch base with David. I think it's improper that one part of the Town says I can't do something because I don't have enough space and another part of the Town says 'you have the space and (unintelligible)'. I think there is a disconnect there and I understand where you are coming from.

Newell: I agree with your statement exactly. However, even if there is the 6100 feet that the Town Assessor is saying that you have over and above the 4100 that this mortgage deed appears to show, we still don't know where the hell the lines are. We are never really going to know where the lines are until somebody in that part of the world does a survey and I will look you in the eye right now and tell you that the first person that walks in here with a survey, a certified survey, he'll get my vote. This has gone far enough. I'm sympathetic with you but.....

Gallagher: I understand that but you will concur that I have brought up about five different things that all jibe with one another and that Mr. Therriault has not produced a deed or a plot plan or a mortgage sketch. He hasn't brought anything. So, my feeling is that what I am presenting should be accepted

Varian: We are keeping a file of everything.

Gallagher: Thank you for all the time you have spent on this.

Varian: I am going to put a date on this (application dated 7/03) for this meeting so we will know when it was given to us.

Varian dated the bottom of the application with today's date and wrote: "Application for deck expansion is denied. There was not a reliable description of land boundaries from which to determine the acreage of the lot or actual structure setbacks, or lot coverage per Shoreland Zoning Ordinance Sec. 15.B.4." It was signed by all members present.

LEISA FERGUSON

The Board next received an application from Leisa Ferguson of 41 Heron Cove Road (Map 1, Lot 19 zoned Resource Protection and Village District). Ferguson's application requested a 10 x 30 addition on the back of a trailer to be used as a family/playroom. A sketch of the proposed addition accompanied the application. Rainey advised that he has

visited the site. The Board referred to Section 12.C.1.a of the Shoreland Zoning Ordinance and unanimously approved the application with the comment: Increase building by 300 square feet and 2700 cubic feet. The following footages were noted on the application:

Existing sq. ft.	1314 sq. ft.	Cu. Ft.	9975
Allowed expansion	394.25 sq. ft	Cu. Ft.	2992.5
Used for Application	300 sq. ft.	Cu. Ft.	2700.0
Footage Left Over	94.2 sq. ft.	Cu. Ft.	292.5

RICHARD WALLACE

An application was received from Richard Wallace of 14 Carrying Place Road in West Point (Map 27, Lot 84). The application requested the relocation of a wharf from south to north in order to have deeper water access. The wharf currently is comprised of 1410 square feet and Wallace would like a 240 square foot addition making a total of 1650 square feet after the addition. He advised the Board that DEP has been to the site and presented a letter of approval from Harbormaster, Doug Alexander as well as a sketch of the proposed addition.

The Board unanimously approved the application after referring to Section 15.C of the Shoreland Zoning Ordinance. He advised that construction will not commence until Spring.

NATHANIEL NORTON

An application was next received from Nat Norton (Map 13, Lot 53, zoned Resource Conservation). The application requested permission to build a cottage approximately 125 feet from shoreline (Atkins Bay). Property is a grandfathered lot of record purchased by Greaves family in February of 1973. Septic system designed with leach field to be located outside of the 250' required Resource Conservation setback.

Norton came before the Board in July and, at that time, Varian advised him to make out an application requesting a lesser setback in the Resource Conservation zone. At that time, she explained to Norton that the Board might not be able to approve the application due to Ordinance restrictions and that the Board cannot give variances.

The application was denied with the following comment: The Planning Board does not have the authority to grant a variance under Sect. 15.B.6.a & c. of the Shoreland Zoning Ordinance. There is not 10,000 sq. ft. of suitable soils and the 2 acre lot size has not been determined.

Norton was advised to contact David Thombs, Board of Appeals, and to meet with them.

KATHLEEN NAVARRETE

Kathleen Navarrete (3 Stoneybrook Road, Map 41, Lot 6) next approached the Board requesting permission to replace an existing deck with a 16' x 16' screened porch. Rainey provided the following figures:

Existing: 2613.00 square feet
 22,294.00 cubic feet

Allowed Exp. 783.8 square feet
 6,688.2 cubic feet

Asking for: 88.0 square feet

Remaining exp. 695.8 square feet
 6,688.2 cubic feet

The application was unanimously approved by all Board members and the above footages were noted on it after referring to Section 12.C.1.a of the Shoreland Zoning Ordinance.

MARK WELLS/AMY HANDLEY

Mark Wells, representing Amy Handley of 67 Branch Road (Map 24, Lot 38, zoned Resource Protection) presented an application for a building expansion. An application for a building expansion had been presented by K.C. Wells in December 2002 and approved. A sketch showing the present building and proposed addition accompanied the application. The application requested the use of 64.05 square feet of allowed expansion (See Planning Board minutes Dec. 11, 2002, attached). There is 88.6 square feet and 30.8 cubic feet remaining after the Dec. 11, 2002 permit. The application is for a small deck with outdoor shower on east side. The Board approved with application and noted the following: Per Sec. 12.C.1.a of the Shoreland Zoning Ordinance - reference is made to an expansion permit dated 12/11/02.

Footage available: 88.6 square feet
Application will use: 64.05 square feet
Remaining footage: 24.55 square feet.

It was also noted that there is no change in the cubic footage.

The motion to approve was amended contingent upon the receipt within a few days of a letter of non-objection from land owner, William Wyman.

CEO, Lee Rainey, advised the Board of a possible “permanent” yard sale being held at Gil Marco’s in Winnegance and talked over the possibility of a business hearing on that

matter. Rainey is investigating.

The July minutes were approved.

Varian spoke of the possibility of a movie being filmed in Popham and advised the Board of upcoming seminars.

The meeting adjourned at 8:25pm.

Respectfully submitted,

Marion J. Hebert

Recording Secretary/
Planning Board Member