

Town of Bristol



Appeals Board Meeting Minutes from April 12th, 2017 **DRAFT FOR APPROVAL** Bristol Town Office

Committee Members present: Craig Elliott, Don Means, Roberta Albright and Slade Moore
Also present: Jessica Westhaver and Joseph Rose, CEO
Absent: Jeanette Wordock
Public: Peter Drum and Ronald Reppucci

The meeting was called to order at 7:00PM by Craig Elliott.

Elliott asked all board members if anyone felt they had a conflict of interest with the case presented by Mr. Peter Drum. All members stated they held no conflict of interest with the matter being presented.

Housekeeping –

- Meeting minutes were reviewed from April 10th, 2017. Means noted that there was a reference to item 5.C. in the bylaws conversation and there is no such section. Westhaver to amend the minutes to read a verbiage change to 5.B.
 - VOTE: Means made a motion to approve the minutes with the amendment made, Elliott seconded; the board voted unanimously to approve the minutes with the 5.B amendment.
- All members were presented with the “Undue Hardship Test” form and the “Notice of Decision and Findings of Fact – Application for Variance” form.

New Business –

- **Variance Application for Ms. Lisle Ogle**
(All members received the full presentation packet provided by Drum at the April 10th, 2017 meeting which also included a proposed site plan (indicating the location of the proposed structure and existing structures as currently located) which was completed by Gartley & Dorsky Engineering & Surveying.)
 - Elliott asked that all board members and public parties introduce themselves. All board members which also included Westhaver and Rose obliged. Peter Drum, Attorney at Law introduced himself as the acting agent for applicant Ms. Lisle Ogle. Ronald Reppucci introduced himself as an abutter to Ogle, located on tax map 04E-220-C (46 Shore Rd) which is directly behind the applicant. Reppucci was present as he was interested in the formality of the hearing as well as having interest as an abutter.
 - Elliott invited Drum to introduce his case to the board.

- Drum started his presentation stating the applicant received ownership of the property, which was gifted to her, on June 15th, 2015. The property is located on Bristol tax map 04E lot 227 (recorded in Book 4896 Page 295).
- Drum stated the plan is to build a year round home that is estimated to be 2000 square feet.
- Drum stated the basis of the issue was the change to the Land Use Standards Ordinance, dated March 18th, 2014, to limit private roads to a 50 foot setback.
 - The Town of Bristol Land Use Standards Ordinance, under Section F. Setbacks, reads: *All structures and manufactured housing erected or placed in the Town of Bristol shall be set back fifty (50) feet from the edge of the traveled way of any public or private road.*
- Drum stated that the lots of land in this neighborhood were divided in the 1050's prior to the Land Use Standards Ordinance.
- Drum cited a case *Wister v. Town of Mount Desert, 2009 ME 66, 974 A.2d 903 (2009)*. The case was regarding a driveway permit on a piece of land that had not yet been developed. The board was curious as to the choice of this case to compare to the Ogle case since the matter was different in nature, specifically where the Ogle lot already holds existing structures and is not for a driveway but for a permanent structure.
- Drum stated the property at its narrowest point was 100 feet, making it a very narrow lot as with all lots in the area. He also stated to move the house back from the road further on any point of the property would require a re-routing of the drainage ditch displayed on the plan. The board posed the question of moving the drainage to allow the structure to be built behind the setback on another portion of the land. Drum stated that it may be achievable through engineering and may need DEP approval.
- Drum spoke about the applicant not being able to receive a reasonable return if there was a different house footprint (long narrow).
 - Means read from the Board of Appeals manual regarding "Reasonable Return" Standard, which reads: *Most court cases in Maine pertaining to zoning variances and the "undue hardship" test have focused on whether the applicant can realize a "reasonable return" on the property without the variance. The court has made it clear that "reasonable return" does not equal "maximum return. It is extremely difficult for an applicant to prove that he or she cannot realize a reasonable return and that no other permitted use could be conducted legally to realize such a return. (One case cited was **Brooks v. Cumberland Farms, Inc.**, 1997 ME 203, 703 A.2d 844)*
- Albright posed the question to the reasoning of placing the proposed structure in a different location on the property. It was stated by Drum that one consideration as to the proposed location is the water view. If the structure was placed elsewhere on the property it is likely that only one room would be able to view the water and the remaining rooms in the home would have diminished water views.
 - Albright read from the "Undue Hardship Test" presentation slides from the MMA Board of Appeals Workshop. She cited the example from test question 2. "The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood." Example #1 reads: *Due to the slope of the land and the owner's desire to*

take advantage of the beautiful view from the higher part of the lot, the owner of the land depicted above wants to build his house close to the adjacent town road, even though there is plenty of flat land on the lower part of the lot. However, building on the lower part of the lot would require a much longer driveway and there would be no view of the lake. In relation to other lots in the neighborhood, this lot is fairly unique as far as the slope of the land. The variance application arguably satisfies the “unique circumstances” part of the “undue hardship” test. However, if the owner has the option of building in another location on the lot that is conforming, even though it is less desirable, wouldn’t that mean that he is seeking more than a reasonable return on the land under the first prong of the “undue hardship” test?

- Drum also brought to the board’s attention that the applicant is also discussing moving the two existing cottages located on the land back farther from the road. Elliott addressed CEO, Joseph Rose, on the requirements of moving an existing structure that is already legally non-conforming due to current Land Use Standards Ordinance. Rose stated a few scenarios:
 - If applicant would like to add on to the structure, it is not against the ordinance as long as it does not make the structure more non-conforming. They can also reconstruct the structure if not removing the foundation. The structure could not be torn down completely and built in the same place.
 - If the applicant would like to physically move the structure it would be required to move to a position that meets the current setback requirements. Drum stated the proposed repositioning of the cottages would be an improvement on the current non-conforming setback, however, acknowledges that it would still be non-conforming.
- The board requested Rose to bring any information to the table regarding the case and the Town Ordinances.
 - Rose stated he did not think a DEP permit would be required to move the drainage system on the back of the property.
 - Albright posed the question to the number of bedrooms planned for the house as this would indicate what size and type of subsurface waste water system would be required. She asked if this would possibly require a change the where the house is planned due to location requirements of such systems.
 - Rose stated that regardless of the Boards decision to grant or not grant the variance request, the applicant would still have to go through building permit applications and approvals in regards to building plans, subsurface waste water applications and soil tests, as well as Shoreland Zoning applications (if deemed necessary) as the Board of Appeals does not grant the right to the proper permits.
- Public Comment on the Ogle matter
 - The board asked if Reppuci would like to share any thoughts on the proposed project presented. He stated that he and his wife Diane have had conversations with Ms. Ogle and her partner Jerry and through this process they are trying to be good neighbors. While the project could impact his current view of the water and he is concerned with this (which is part of the reason he purchased his property) he is trying to hold a good neighbor relationship. He did not verbalize a stance on the proposed plan.

- The board also received letters from two abutters (exhibit – 4 from Drums presentation) from Mr. Brian McLain located on tax map 044 lot 226 and from Ms. Patricia Noyes – Trustee of the Patricia F. Noyes Revocable Living Trust of the property located on tax map 04E lot 224. Both letters were in support of the variance request.
 - The board posed the question to Drum as to why the two abutters were the only letters received. Drum stated they were the only abutters he reached out to. *(No communication from abutter J. Elliot and Victoria Thomas of tax map 04E lot 225).*

- Elliott addressed Drum for any further comments. None were made and Drum thanked the board for their time and consideration. Elliott address the board and asked if they had any further questions. The board declined.

- Elliott moved forward to conduct the “Undue Hardship Test” on Application of Variance.
 - **Undue Hardship Dimensional Variance.** Has the applicant shown that strict application of the ordinance to the applicant and the applicant’s property would cause undue hardship?
 - Question (a). Can the land in question yield a reasonable return unless a variance is granted?
 - The board discussed that waterfront property in Bristol, Maine is very valuable.
 - VOTE: Means made a motion that question a. was not met, Albright seconded; the board voted unanimously against.

 - Question (b). Is the need for a variance due to the unique circumstances of the property and not to the general conditions in the neighborhood?
 - The board discussed that presence of the drainage system was not detrimental to the area and can be moved.
 - VOTE: Means made a motion that question b. was not met, Albright seconded; the board voted unanimously against.

 - Question (c). Would granting of a variance alter the essential character of the locality?
 - The board discussed that it would not alter the character.
 - VOTE: Means made a motion that question c. was met, Moore seconded; the board voted unanimously in favor.

 - Question (d). Is the hardship the result of action taken by the applicant or a prior owner?
 - The board discussed that after the research presented that the hardship was not result of the applicant or prior owner.
 - VOTE: Means made a motion that question d. was met, Albright seconded; the board voted unanimously in favor.
 - The board determined based on the “Undue Hardship Test” that the variance application has been denied.
 - Drum requested a copy of all blank documents used in Variance requests by the Board of Appeals be sent to him for review and reference. Drum also requested any documentation on when and how the Ogle matter was discussed by the board to include any official meeting minutes.

- **Follow-Up Items for next meeting -**

- The board will discuss staggering terms for all board members where the board recently were all appointed on the same date. Would like all members present for decision.
- Completion and approval of amendments to the Board of Appeals bylaws.

Meeting was adjourned at 8:05PM. Next meeting will take place on Wednesday, May 24th, 2017 at 6:00PM at the Town Hall.

Respectfully submitted,
Jessica Westhaver
Appeals Board Secretary

Appeals Board Chairperson APPROVED: _____

DRAFT