

Board of Appeals Meeting 7/19/2013

Call to order, motion to begin Disalvo, second by McCarthy. Chairman Schutz outlines procedure.

Call for first case-Rohar trust. Member Aryani asks to recues due to proximity to her property (not an abutter). Discussion from floor regarding quorum and result if a tie vote. Member Disalvo notes that he believes a tie would result in defeat of applicants appeal. Member McCarthy agrees.

Attorney Neault (representing Rohar Trust) presents Appeal for lot 273. Marino /Rohar Trust setback reduction request 273 Leisure Lane Attorney Bob Neault representing the appellant made a brief presentation regarding the appeal including review of the application before the board. Member DiSalvo asked Atty Neault if the appeal was De novo and he replied he thought it was. Member DiSalvo asked if he knew that or was it represented to him by the appellant. Atty Neault responded it was the best of his knowledge and it was represented to him by his client. Member McCarthy commented that the property had been appealed in the past but the appeal was withdrawn before it was heard due to technical concerns at the time. Member Disalvo commented he was satisfied the appeal was De novo. Member Disalvo asked Atty Neault in his opinion did Rowe v City of South Portland 1999 ME 81 apply in to this application. Atty Neault responded he was not familiar with the case, could not comment on its applicability. Chairman Schutz asked if there were abutters who wished to comment on the application before the board.

John Scarrett lot 272 asked to be recognized. He is an abutter and the home is owned by his wife and her sister. Susan Scarrett was in attendance at the meeting. The floor was yielded to Mr. Scarrett. Mr. Scarrett made a lengthy presentation to the board. The following are the points of his presentation:

1. The original notice made by the Board and the Town was defective. The date originally published in the FINS was wrong. The package he received via certified mail did not include the date and other information. He is not sure that the other abutter received the notice. Chairman Schutz responded that the Fins were corrected and that he thought that adequate notice had been given. Member Disalvo asked if it was the contention of Mr. Scarrett that the application was invalid because of improper notice. He replied yes. Member Disalvo comments that the contention appears flawed because he is here and well prepared. Atty Neault objects to the contention about the other abutters notice because Mr. Scarrett has no standing to represent the other abutter (Rice). Member Mccarthy notes that Rice may simply not care or not object. Member Disalvo agrees.

2. Mr. Scarrett notes that the property did not conform to the instructions on the setback reduction request form. (Property must be marked with string tape or paint and the like and a temporary sign must be affixed to the lot showing the date and time of review. Member Disalvo asks for clarification regarding the abutter's objection to this issue.

3. Mr. Scarrett next made a presentation regarding the appeal and how it was in violation of a number of Maine statutes and ordinances. The following is a summary of his comments and responses by the board.

A. The board does not have the authority to grant setback reductions in a shore land zone. (the appellant's property is in this zone) Specifically, he contended that Frye Island Statute §101-1-4 D5 Non Conforming Setbacks does not conform to the requirements of MRSA §30A-4353.

B. §MRSA §38 435-449 require that any ordinance adopted by a municipal body within a shore land zone be consistent with or no less stringent than the minimum guidelines established by the above referenced statutes.

C. Submitted minutes of the Frye Island Planning Board dated 9-27-2008 as evidence contending that it was never the intention of the Planning Board to have Frye Island Statute §101-1-4 D5 Non Conforming Setbacks apply to the Shore land zone.

There were multiple questions from every board member regarding the presentation. Islander Steve Kaplan, who was attending the meeting as a member of the public and was a member of the Planning Board at the time. Mr. Kaplan disagreed with Mr. Scarrett's contention that the intent of the Board was to only have the ordinance apply to inland lots.

Chairman Schutz noted that he felt we could not vote on the application tonight until the board had a chance to consult with the town attorney regarding the issues noted by Mr. Scarrett. A motion was asked for and Member DiSalvo called for a motion to consult with the Town attorney regarding the application as submitted, Second by Member McCarthy. Vote all in favor.

Member Bobbi Aranyi rejoined the board with no conflict on the next application.

Gary E Nolen Setback Reduction Request 36 Leisure Lane. After introduction by Chairman Schutz, Mr. Kaplan made a short presentation regarding the application.

Member DiSalvo noted that he did not feel comfortable voting on this request because the property is also in the shore land zone and it would be inconsistent to vote on it since it is the same type of request that the previous application was for. Member McCarthy suggested that the Board could vote and place a stipulation that it is subject to the finding of the Town Attorney's comments and research. Member DiSalvo commented he understood the attempt to try and be accommodating but still felt a no vote was in order.

Mr. McCarthy suggested a revised meeting date of August 9 to rehear these cases so that construction could begin this season and that the board would have adequate time to make notices and get opinion of counsel.

Chairman Schutz called for a motion to make the next meeting August 9, Made by member Aranyi, Seconded by DiSalvo. All in Favor.

There was a motion from Bobbi Arranyi to move Tim McCarthy from alternate status to regular member status. It was seconded by Andrew D and motion carried.

With all business being conducted a call to adjourn was made at 8:10 by Chairman Schutz, Motion made by Member DiSalvo, Seconded by Member McCarthy. All in favor.

Meeting Adjourned at 8:10