

MINUTES
BOARD OF APPEALS
TOWN OF DAMARISCOTTA
April 24, 2017
3:00 PM

MEMBERS PRESENT: Wallace Schling, Fred Sewall, Bruce Rockwood

STAFF PRESENT: Stan Waltz, Code Enforcement Officer; Anthony Dater, Town Planner

PUBLIC PRESENT: Maia Zewert, Lincoln County News; Gabe Shadis, neighbor to Stepping Stone Housing property; Pat Shadis, neighbor to Stepping Stone Housing property; Amy Lalime, neighbor to Stepping Stone Housing property; Paul Sherman, neighbor to Stepping Stone Housing property; Cindy Sherman, neighbor to Stepping Stone Housing property; Marilee Harris, Stepping Stone Housing, Inc. Representative; Bill Howlett, Stepping Stone Housing, Inc. Representative; Jessica Sirois, neighbor to Stepping Stone Housing property; Tom Quantano, interested citizen; Gina Hamilton, Wiscasset Newspaper; Mark Lazzari, neighbor to Stepping Stone Housing property.

CALL TO ORDER: The meeting was called to order at 3:01 pm by the Chairman.

MINUTES:

10/21/16: On motion Rockwood / Sewall to accept the minutes as submitted.

VOTE: 3-0 IN FAVOR

PUBLIC HEARING – ADMINISTRATIVE APPEAL BY GABE SHADIS ET AL OF THE PLANNING BOARD’S DECISION OF SEPTEMBER 6, 2016 – TO ACCEPT THE CODE ENFORCEMENT OFFICER’S DETERMINATION OF GRANDFATHERING 7 RESIDENTIAL UNITS FOR STEPPING STONE HOUSING, INC ON PROPERTY LOCATED ON TAX MAP 007 LOT 41 & 41-001 AT THE INTERSECTION OF PLEASANT & HODGDON STREETS.

Chairman Schling reminded the room that no new information is allowed to be presented at this hearing. He gave the appellant the floor.

Pat Shadis spoke for the appellant group. She told the Board that she is uncertain about what goes into the record. She stated that at one of the Planning Board meetings, that was supposed to be a public hearing, that Board shut down the public comment due to the late hour. She is concerned that maybe not all the information had been given to the Planning Board.

Schling stated that if Shadis feels there is missing information or information that they did not get to present, that should have been part of the application for appeal.

Shadis told him that she isn’t sure what is the record.

Rockwood noted that they submitted a 53-page application.

Gabe Shadis stated that the appeals process is not really geared toward their specific situation so it was difficult include everything in the application to represent their concerns. They just want to make sure that the Planning Board heard all of their concerns.

Rockwood asked him if the grandfathering was incorrect, is everything else irrelevant.

Gabe said yes.

Rockwood asked him if he presented his concerns to the Planning Board.

Gabe said yes, numerous times over the year and a half long process.

Rockwood asked him specifically if the Planning Board had heard the concerns included in the application for appeal.

Gabe answered yes.

Rockwood stated that he would like to hear both sides before they go too far.

Gabe told the Board that the CEO designated the property as grandfathered for 7 units. Living in the area and being familiar with the lot, he doesn't believe there has ever been 7 occupied units there. The CEO included the in-law apartment contained within the Andrews house that was NEVER lived in and the illegal mobile home and those should not be included in the grandfathering total. Gabe went on to talk about several of the dwellings not being occupied at certain times over the years. He told the Board that it doesn't seem right to grandfather illegally placed dwellings. The tiny house had no plumbing & no appliances, it was just a shell. In his opinion those dwellings fall outside the grandfathered definition.

Gabe went on to tell the Board that they feel that the lot size can really only support 3 dwellings maximum. He feels the intent is not to perpetuate the non-conformance, it should be to vacate the non-conformance as soon as possible.

Schling asked the CEO how the grandfathering was determined.

CEO reviewed the process to date:

Stepping Stone Housing (applicant) applied for a permit to destroy the main house. The Town tax rolls show 2 units in the main house. CEO contacted Great Salt Bay Sanitary District; they show 7 users at that property location. A permit was issued to replace the 2 units taken down. Applicant asked about a 3rd unit which triggered the review by the Planning Board. Applicant has since reduced the number of dwellings requested to 6.

CEO told the Board that he has no record of any complaint by abutting land owner about the dwelling that is situated over the property line. Any replacement dwelling will be required to meet all set back requirements.

Rockwood stated that it seemed to him that some of the items that Shadis is opposed to are some of the changes Stepping Stone Housing made in response to neighborhood concerns.

Gabe told him that there may have been some adjustments made as goodwill gestures, but at issue for the neighborhood is the grandfathering of dwelling units that have long been extinguished.

Rockwood stated that if there's no paper trail, isn't it just hearsay that the mobile home was straddling the property line?

Gabe stated that it's been a long-term issue – the Rand's (owners of abutting lot) asked previous owner, John Andrews about it for 20+ years. There is mention of it in Planning Board minutes on the daycare in 2008-2009 (included in the application for appeal).

CEO stated that was not why this hearing was being held – any property line straddlers will be in compliance going forward.

Shadis stated that she doesn't believe the CEO checked into abandonment at all.

Rockwood read from the Town Attorney letter of August 8th about at the time of the ordinance enactment there were 7 units in place, the use pre-dates the ordinance.

Jessica Sirois and Amy Lalime asked how an illegal structure can be grandfathered.

Rockwood stated that he wasn't sure sufficient proof exists as to the illegality of the location of dwelling in question.

Marilee Harris, representing Stepping Stone Housing asked to address the points of appeal:

Stepping Stone Housing chose to reduce the number of dwelling units to 6 from the grandfathered number of 7, as a direct result of concerns voiced by the neighborhood.

As for the illegal dwelling – it is approximately 5% over the property line. She has spoken with the property owner and has a different version of events than Gabe. Plans to remove, replace the unit and screen have been discussed with the abutter.

Stepping Stone Housing plans to utilize the same number of dwellings that have been occupied on the property on and off for the past 50 years.

Shadis stated that the burden of proof is on Stepping Stone Housing to prove that they were not abandoned.

Rockwood explained that the Board of Appeals cannot re-argue facts of the case on abandonment – perhaps the Planning Board felt the burden had been met.

Schling stated that the CEO said he reviewed the tax rolls and the sanitary district records – those are facts.

Gabe told him that the sanitary district only has 1 user, Andrews did the branching out on the property.

Sirois told the Board that the neighborhood's accuracy on the abandonment issue is far greater than any written record, there have never been 7 units there.

Sirois went on to talk about the effects of the proposed number of people on that small lot.

Schling told her that that is a Planning Board argument, NOT a Board of Appeals fact finding.

Sirois, Lalime, & Shadis all stated that they did tell the Planning Board. They tried to address the concerns with the Planning Board and were told to come to the Board of Appeals, they did that earlier and were turned away by the Board of Appeals. They feel this has gone on longer than necessary.

Schling stated that their previous attempt had no legal standing as the Planning Board had not made a decision yet. Now that they have made their decision, the Board of Appeals needs to determine if the Planning Board acted appropriately.

Rockwood stated that the grandfathering / abandonment issue was brought to the Planning Board and was considered by the Planning Board in their grandfathering decision.

Gabe felt that this is an expanded change of use, not a continuation of an existing or previous use.

Dater read from the Site Review Ordinance

Applicant has the burden of proof to prove non-abandonment; others have burden to prove otherwise. The Planning Board gathers information and uses it to make decisions.

Rockwood stated that it sounds like Shadis is not convinced that the Planning Board took their concerns into consideration.

Shadis stated that both parties can't have the same burden of proof. The Planning Board's answer was that there was no real way to prove abandonment, Mr. Andrews is deceased.

Gabe stated that he didn't believe that Stepping Stone Housing every proved non-abandonment.

Schling stated that the burden of proof needs to be more definitive than a neighborhood memory or hearsay – on either side.

Rockwood stated that the Board of Appeals can review the Notice of Decision findings of fact – it reviews the history of the project & process to date.

CEO told the Board that he did not make the grandfathering decision – once the 3rd unit was requested he forwarded the application to the Planning Board, which took all deciding away from him. At the time the ordinances were enacted, these places were in place. Anything new to replace existing units will have to be in compliance.

Shadis questioned the financial capacity of Stepping Stone Housing, Inc.

Rockwood read from the notice of decision that the applicant will have to prove capacity at each phase.

Shadis stated that a 10-year construction project will have a negative effect on the neighborhood, she thought the Planning Board was supposed to take the neighborhoods into consideration.

Rockwood stated that it can't be both ways, the Town's comprehensive plan says there needs to be more affordable housing within walking distance to downtown area.

Shadis stated that Stepping Stone Housing would not be financially hurt if this project did not go through.

Rockwood asked how they would know that?

Shadis stated that they could put up 3 dwellings on that property and still be helping.

Sirois told the Board that her business (in her home) will be adversely affected by this project.

The Board discussed the date of the appeal & the notice of decision.

Rockwood told the appellants that the neighborhood could do a subsequent application for appeal based on the notice of decision + the grandfathering and get 2 bites out of the apple, so to speak.

Rockwood told the group that this Board had 3 choices:

Approve the appeal as submitted

Reject the appeal / uphold the Planning Board's decision

Remand it back to the Planning Board for further review

If the group is not happy with the Board of Appeals' decision, the next step would be to take it to court.

He went on to ask the group if mediation was considered.

Sirois told him that she found a professional mediator, but Bill Haines of Stepping Stone Housing refused to pay for it.

Amy Lalime told the Board that she feels it IS a change of use. There won't be anyone living onsite anymore. It's a negative impact to the neighborhood, it won't be the same having someone monitor from off site.

Rockwood told her it was not necessarily a change in use, but a change in process.

Schling said he thought it was possible that a Board of Directors with an application process would be more discriminating than Mr. Andrews had been.

Sirois stated that she has had negative interactions or no response at all dealing with Marilee Harris, who is supposed to be monitoring the site.

Harris told the Board that she wasn't sure who was negative. She responds to each and every call received.

Schling stated that the Board must deliberate on the facts of the case at hand.

Shadis asked how someone can submit information to the Planning Board.

Dater stated that anyone can drop anything off at the Town Office for the Planning Board.

Shadis stated that the Planning Board did not require any proof from Stepping Stones Housing on abandonment.

Rockwood told her that if she did not agree with the decision then she should submit proof, actual, factual proof on abandonment.

Schling stated that he felt the question was answered by the Town Attorney.

The Board reviewed the letter from the Town Attorney (Attached)

Sewall felt the Board needed more information on what went into the Planning Board's decision on grandfathering.

Dater told this Board that he thought the Planning Board relied on the Town Attorney's opinion in the letter (attached) as well as the info on the tax bill and the Great Salt Bay Sanitary District, they did not require more info from the applicant.

Schling stated that he felt it should go back to the Planning Board.

Sewall stated that he wasn't sure he agreed with that.

Rockwood felt that the Planning Board heard all this information and decided to grandfather and approve the application. He asked the Board if they really think there will be a different outcome with the same info if it's returned to the Planning Board.

Sewall stated that the facts have to be presented or brought to the Planning Board, it's not the Planning Board's job to find the facts. He would like to hear the Town Attorney's opinion.

Rockwood asked the group if they were appealing the grandfathering issue separately.

Shadis stated they were not, they would prefer to do it all at once, all out on the table.

Rockwood asked if there should be a continuance to the appellant.

Schling stated that he was not in favor of that option, he feels it should be returned to the Planning Board.

Rockwood did not agree with Schling, it needs to be decided here because the appellants don't argue with the Planning Board; the process is here. The Appeals Board could continue the hearing to allow the appellant to revise their appeal to include all concerns aired today.

Shadis stated that they did still have a few days to make appeal based on the date on the Notice of Decision.

Rockwood stated that if it was sent back to the Planning Board it will extend the process excessively.

Shadis told the Board that this was a huge matter to the neighborhood, that was what mattered.

Schling stated that this Board could deny the appeal today on the Grandfathering and then the appellants could appeal on all the decisions in this project.

Or

This Board could continue this hearing and the appellants can amend their existing application for appeal on all the decisions.

Rockwood reminded all it was not a de novo hearing – only specific details on the facts in question on the Notice of Decision, nothing new can be presented.

Rockwood also stated that he would like the Town Attorney to review the appeal.

On motion Rockwood / Sewall to continue this hearing to allow the appellants to revise their application to be more complete.

VOTE: 3-0 IN FAVOR

Lalime asked what the status of the project was now.

Dater told her that the applicant has a legal building permit and can build 3 dwellings under the current ordinance.

Rockwood stated that mediation still might be valuable to all involved.

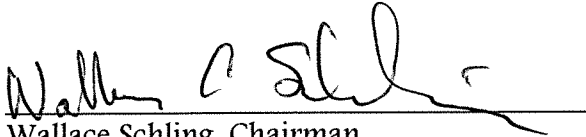
A. ADJOURNMENT

This hearing was not adjourned – it was continued at 4:55 pm.

Respectfully submitted by:

Rebecca J. Bartolotta, Deputy Clerk

We, the undersigned, do hereby approve the minutes of the April 24, 2017 Board of Appeals Hearing & Meeting.




Wallace Schling, Chairman



Fred Sewall

Richard Mayer



Bruce Rockwood

Dated: 8/26/17