

York Board of Appeals - Minutes  
January 25, 2023

Paul Salacain (Chair) called the meeting to order at 7:18.

**Attendance:** Michele Marean (alternate) , Mary Daun, Paul Salacain, Robert Lascelles and Matt Lovo.

**Finding of Fact of Meeting on December 14, 2022:**

*R. Lascelles made a motion to approve the FOF for a General Variance as amended, seconded by M. Daun. All members voted in favor, motion passed 5-0.*

Robert Lascelles, Mary Daun and Paul Salacain stated they have all been members with David Woods on the Appeals Board in the past and that will not alter their decisions tonight based on his appeal.

**MATTER UNDER CONSIDERATION: Becky Linney, 180 Logging Road Cape Neddick,** requests Reconsideration on the Board of Appeals decision made on Wednesday, December 14, 2022 regarding a general variance granted to 152 Logging Road, Michela Mastellone-Schottman. Property in question is 152 Logging Road, York ME 03909. Map Lot 99-31-A.

P. Salacain stated that the request for reconsideration was filed on 12/20/2022 and is timely. The Board of Appeals received a letter, dated Jan 24, 2023, by email this afternoon from Attorney Joseph C. Siviski, of Perkins Thompson, P. A.. The letter details that on December 14, 2022 *"The Board Acted Beyond Its Jurisdiction in Granting the Requested Variance."*, *"The Board Must Follow the Procedures Set Forth in the Ordinance Before Issuing Any Variance in the Shoreland Overlay District"* and *"The Board Should Deny the Variance Because the Applicant Has Failed to Demonstrate Undue Hardship"*. P. Salacain stated that the content of the application of reconsideration and the attorney's letter make different points regarding the reconsideration.

**Appeals Board Discussion:**

M. Daun said that she failed to see what point they are making this appeal on. P. Salacain pointed out that the application stated *"neither the applicant presented nor the Board consider pertinent information required by the ordinance. Only man made wetlands can be filled under section 11.3.6. Was the wetland evaluated using the NH method? What proof was offered that the proposed road will not cause Storm water backup on the abutter (section 11.4.7) The site plan submitted showed a footprint greater than 1,000sqft. The conditions were a de facto variance."* The attorney's letter "Legal Basis for Reconsideration" does not mention any of these points. The letter also adds parties to the action that were not on the original application for reconsideration.

The chair stated that Board considered the 4 variance standards at the meeting on December 14, 2022 and voted on this with a 5-0 vote on each criterion for a general variance. He believes the attorney, in this letter, is trying to couple the language used in the variance when they are varying the 100ft setback to a 75ft setback, after that conditions were added in that were

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centered around the fact that the driveway needed to cross wetland at 3 different points. Code is responsible for making sure variance conditions are completed. The fact that wetland fill needs to be used, up to the maximum, is in the ordinance. M. Lovo stated they were making a minor adjustment to a previously approved variance in 2007. R. Lascelles stated what was contained in the variance that was granted, restricted the variance (18.8.2.3). M. Daun stated that, at the last meeting, everything we were talking about here has already been discussed, specifically every bullet point and that's why we added those conditions.

*R. Lascelles made a motion to deny the request for reconsideration, seconded by M. Lovo. M. Daun - yes, M. Marean - yes, R. Lascelles - yes, M. Lovo - yes and Chair - yes. Motion passed 5-0.*

**MATTER UNDER CONSIDERATION: Mark Lawrence**, 10 Lawrence Lane, Kennebunk, requested a Minor Dimensional Variance. Property in question 177 Clay Hill Road, Cape Neddick, ME 03902. Map Lot 99-31-A.

Mark Lawrence stated his mortgage company will not process his application as the house is located 3ft close to "Parcel B", a parcel abutting this property in question. This parcel is a long, slim strip, around 300ft. The parcel is owned by Maine DOT. During the permitting process, t obtained a driveway permit. When he asked about "Parcel B", he was told by Public Works there would be no problem. The applicant used the edge of the road in error when measuring for the placement of the foundation which resulted in a three (3) foot discrepancy that was only identified when the mortgage company performed its mortgage survey.

P. Salacain asked the applicant if he was working on getting an easement from DOT, he said no and stated further that he was it was no longer in use and that's why DOT gave it to the Town.

Harry Norton (Code Enforcement) stated when Code received the application, the plot plan submitted showed 69ft setback to the road which is within the ordinance. Code didn't require a survey. On the GIS, parcel B looks like it's part of Clay Hill Road and that's how they treated it. M. Lovo asked what the status is for parcel B, is that considered a right of way or something else? H. Norton said that he is unsure but all they know is that the Town owns it and absorbed it due to some Tax issue. M. Lovo said the parcel needs to be recorded as "a right of way to that road" and then they don't need an easement if that's how it's recorded. M. Marean asked where anything is located that would make this known this parcel is Town owned and H. Norton said he would defer to assessing.

### **Appeals Board Discussion:**

M. Lovo mentioned this variance is asking for 3ft which is within the 10% the Board is allowed to grant. P. Salacain mentioned continuing this matter until they can determine the status of Parcel B and whether the Town owns it or not. R. Lascelles stated without the knowledge of parcel B we don't know how that will affect frontage or setback. If the parcel of land has an easement or deeded away the problem would go away and he does not feel comfortable voting on this. P. Salacain mentioned it's important to go over the standard for a Minor Dimensional Variance (18.8.2.10) because the applicant needs to meet all of the standards. The only standard P. Salacain feels is not met is #4: "The practical difficulty is not the result of action taken by the

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petitioner or a prior owner." This is speaking for the variance only. R. Lascelles said looking at the scenario, it sounds like a lack of knowledge.

*M. Lovo made a motion to continue this matter until the next meeting, February 8, 2023 (the meeting will be held on April 12, 2023 if Feb. 8th won't work). The Town is charged with resolving the status of Parcel B, seconded by M. Marean.*

M. Daun - yes, M. Marean - yes, R. Lascelles - yes, M. Lovo - yes and Chair - yes. Motion passed 5-0.

**MATTER UNDER CONSIDERATION: Woods Family Inc.**, 21 Railroad Avenue, requests a Minor Dimensional Variance. Property in question is Wiggly Bridge Distillery at 441 US Route 1, York ME 03909. Map Lot 54-10-B.

The Woods Family Inc. is represented by James Lowery, PE of Fuss & O'Neill.

James Lowery said there has been no construction started. The Wiggly Bridge Distillery property is situated on just a over 1/3 an acre. It existed before the March 13, 1982 time frame. It's in the Rt. 1-3 zoning district which has standard dimensional setbacks of 30ft. There is a provision in the ordinance that allows for a reduction up to 50% of setback numbers for lots that predate March 13, 1982 and do not meet the requisite frontage or size. The Wood's family own the parcel to the rear of the site lot as well and Wiggly Bridge Distillery leases a portion of that lot for an existing barrel storage house. There are 2 existing storage units that are along the rear property line and these would be removed as part of the proposed building addition. These structures extend 16ft out from the existing side and rear of the site at present. With their removal and the new building addition the setback would be reduced to 13ft. The minor dimensional variance would allow for a 20%. The size of the addition, proposed is to be 16ft off of the rear and side for the applicant's use for utility services, storage etc.

David Woods stated they buy more pallets of bottles due to the supply chain issues and they need storage for them. The dimensions of the building addition are worked out to accommodate this increased need. J. Lowery stated that the Planning Board was clear to them a variance was required for setback issue.

M. Marean asked if they own the adjacent lot, have they given any thought into moving the lot line a foot and D. Woods said they decided against this as they would lose important grandfathered rights.

M. Lovo asked Code that if they were to go under the 15ft, are there any fire spread requirements that would need to be addressed or in any of the building materials overhang. H. Norton replied that there were no issues. D. Woods said the Fire Department has been included throughout the process and they asked them to add temperature sensors in the brick houses which they have already added.

**Appeals Board Discussion:**

Voting on §18.8.2.10 - Minor Variance from Dimensional Standards:

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1. "Strict application of the ORdinance to the petitioner and the petitioner's property would cause a practical difficulty."  
M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes, M. Lovo - yes. 5-0 vote.
2. "The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood."  
M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes. M. Lovo - yes. 5-0 vote.
3. "The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting."  
M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes, M. Lovo - yes. 5-0 vote.
4. The practical difficulty is not the result of action taken by the petitioner or a prior owner."
  - a. M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yea, M. Lovo - yes. 5-0 vote .
5. "No other feasible alternative to a variance is available to the petitioner."
  - a. M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes, M. Lovo - yes. 5-0 vote.
6. "The granting of a variance will not unreasonably adversely affect the natural environment."  
M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes, M. Lovo - yes. 5-0 vote.
7. \*DOES NOT APPLY\*

*M. Lovo made a motion to grant the 2ft minor dimensional variance for Wiggly Bridge Distillery map lot 54-10-B, seconded by M. Marean.*

M. Daun - yes, M. Marean - yes, R. Lascelles - yes, Chair - yes, M. Lovo - yes.

Motion passes 5-0.

**Code Business:**

The Town hall will be moving on February 10th and will be closed from February 10th thru February 13th.

There is one appeal for the February 8, 2023 meeting. If that meeting cannot be held then the next meeting will be held on April 12, 2023.

**Adjourn:**

*Motion made by M, Daun, seconded by M. Lovo. All members voted in favor.*

