

Chebeague Island Planning Board
Minutes of the May 21, 2009 Meeting.

Members Present: Sam Birkett, Ernie Burgess, Mabel Doughty, Tad Runge, Beth Howe, Jane Frizzell,
Others present: Donna Damon, Thea Youngs

Beth called the meeting to order at 7:25

Approval of the minutes of the April 30th 2009 Meeting

Mabel Doughty moved to approve the minutes of April 30 2009, Jane Frizzell seconded, and they were approved unanimously.

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2. *Consideration of whether the Planning Board will review applications for relocation or reconstruction of non-conforming structures in the Shoreland Zone, or whether this review will be delegated to the Code Enforcement Officer.*

a. Also procedure for making this decision.

Beth Howe passed out memos that she had received from the Maine Municipal Association and Code Enforcement officer Paul White (attached).

She said that this particular issue could also raise issues with other parts of the zoning ordinance, and could possibly require an amendment to the ordinance, which she asked the Maine Municipal Association about.

In a memo from MMA, attorney Suzanne Pilgrim stated that she doesn't think that the decision means amending the ordinance, and the committee would probably not have to go through those procedures, but parts such as a public hearing could be valuable. If the board does decide to delegate it, the memo also suggests formal wording.

The planning board has the option of either deciding whether to approve it tonight or to have a public hearing at next planning board meeting before making a decision.

There are two situations where the Planning Board could delegate authority to the Code Enforcement Officer, both having to do with nonconforming structures in Shoreland Zone. If preexisting houses in Shoreland Zone either burn down or are moved, the building must conform to 75 ft setbacks to greatest practical extent. This can either be determined by the Planning Board or Code Enforcement Officer. If the Code Enforcement officer is to determine it, the responsibility must be delegated by the Planning Board.

Ernie Burgess asked if it can it be done on a case by case basis.

Donna Damon asked if the decision could be rescinded at a later date if the Planning Board would like more responsibility.

Beth Howe replied that it probably could.

Donna Damon said that she thought that damaged or destroyed buildings would occupy the original footprint.

Beth replied that the condition is in the shoreland zoning regulations from the state.

Donna Damon said that the condition seems very subjective.

Ernie Burgess said that he remembered when (Howard ...?) tore down his camp and rebuilt it, it had to be moved back.

Beth Howe said that for Martha Champagne's new house, the new house was moved back to where front setback could be met.

Donna Damon said that she gets numerous complaints from residents about interpretation of laws, and is concerned that planning board would give up any authority that it has, since the role of a citizen planning board is to have a board of peers, and have more discussion and compromise. She said that she is concerned about the black and white of the issue.

Mabel Doughty suggested that perhaps if it was a thorny issue at some point, something could be in place where the Code Enforcement Officer would have to seek the advice of the planning board.

Sam Birkett suggested that it is better to have the opinion of five or more people rather than just one, and that it is a lot in hands of just one person.

Beth Howe said that Paul White's point is that Shoreland zoning is one of the most difficult things to enforce, and at some point people will argue about it. He believes that the Planning Board will be more lenient than the Code Enforcement Officer, and that Shoreland zoning is very difficult to permit and enforce. He also suggested that it was hard for a group of people to say no.

Sam Birkett said that if the board is struggling, they could ask advice of the Code Enforcement Officer on a particular subject.

Donna Damon said that she was concerned because Paul White initiated this proposal, rather than it coming from planning board itself. She said that it is too early for Chebeague as a town to change this instead of trying it and seeing how it works. She said that she would also want specific information from Maine Municipal Association.

Donna Damon said she wants to be sure that there aren't cases where people are denied the opportunity to make the best use of their property and land.

Beth Howe said that the planning board we would make same calculations as the Code Enforcement officer would. The difference would be who is doing it.

Donna Damon said that the Planning Board would have several people thinking of it, (rather than just the Code Enforcement Officer)

Beth Howe replied that Donna's views are based on assumption that CEO has a more rigid interpretation.

Tad Runge asked if the decision on delegation would change when different the town had a different Code Enforcement Officer.

Beth Howe said that the only option regarding the content of the Shoreland zoning law is to have options that are more strict. Local regulations cannot be less strict than those of the state. The current language will stay the same and continue to be in ordinance because it is in state law.

Donna Damon said that she wants to make sure that when it is interpreted it is looked at by more than just one person. In the Shoreland zone there are are a lot of topographies. She is worried that by passing on the authority the town will lose flexibility and come up with what the best possible solution for both the homeowner and shore.

Beth Howe asked committee members if there were any other arguments.

Tad Runge said that the Shoreland is the most fragile and most valuable land in the town, and that of all the reviews that the planning board should be involved in, this is one of the most important. The more minds are involved the better the decision will be.

Beth Howe asked the committee if they were ready for a vote on the issue.

Ernie Burgess made a motion that the planning board attempt to go through the process before turning over to the CEO.

Mabel Doughty seconded the motion.

Ernie Burgess retracted the motion

Jane Frizzell made a motion that the Planning Board will handle issues about Nonconforming uses in the Shoreland Zone for the foreseeable future.

Donna Damon asked how this zoning works with marine uses such as the Boatyard.

Beth Howe replied that the Boatyard is in the Commercial Fisheries and Maritime Activities Zone, and therefore has no setback.

Sam Birkett asked what could happen if a community has strong a feeling against the State law.

Beth Howe replied that the community has no choice on the Shoreland zoning regulations.

Sam Birkett said that she sympathize with people on water who have had destroyed homes.

Donna Damon asked how Shoreland zoning would work with fish-houses?

Beth Howe replied that it would probably be allowed if it was built in the Commercial Fisheries and Maritime Activities Zone, but they couldn't be built just anywhere. The definition of the CFMA zone is local, and the island did have say in defining the zone.

Donna Damon said that the zones identified places where people had activity or historic activity.

Tad Runge asked if the town designates the CFMA zone or if the State does.

Beth Howe said that the town does, and we could change it.

Beth Howe said that it is worth noting that for new construction in Shoreland zone approval does not have to come from the Planning Board, but rather the Code Enforcement Officer.

Discussion followed on board of appeals, and its role versus that of the planning board.

Sam Birkett seconded Jane Frizzell's original motion, and it was approved unanimously.

Adjourned at 8:12