BOARD OF ADJUSTMENTS AND APPEALS
September 16, 2015 Minutes

Attending: Peter Rice, Chairman; Jay Corson, Sam McLean, Tad Runge, & David Stevens - a quorum.
Nick Adams - C.E.O.

Meeting called to order at 7:07PM

Minutes of the last meetings (8/26 & 8/28) were approved with one correction - the 8/28 meeting should have indicated it was a continuation of the Harvey Request for a Variance. Vote 4 in favor, one abstention.

Purpose of the Hearing:
Request for a Setback Variance from Alexandra Zaugg-Swafford

The CEO presented the facts; the initial request for a building permit for a 12 x 20 gambrel roofed shed; its rejection because the rear and side setbacks for the structure did not meet the code (there being no other problems), and subsequent request for a variance.

Jeff Summa, representing the applicant, then spoke:
In response to a question from Mr Corson, Mr Summa mentioned that his recommendations to the owner for the placement of the shed, which would have met the setback requirements, were rejected by her. The request for a building permit was still submitted after Mr Summa advised her it would be rejected. She subsequently went ahead and has appealed the decision to the BOAA.

Mr Adams responded to some questions. A shed over 80 sq. ft needs to be at least 75 feet from the shoreline if it is in the 250 shoreline zone. This location exceeds that. DEP has no problem with the shed’s setbacks.

Conflicts of Interest - None

Letters from abutters:
Emily Gaston Muller representing the Gaston Family Trust, 52 Capps Road - opposed the request.
in an email - Joseph R. Chamberlin, representing his father J. Lockwood Chamberlin, 4 Artist Pt. Rd. opposed the request.
Another abutter present, Sally Tubbesing, 63 Capps Rd., spoke and voiced her opposition to the request for a variance, questioning the economic damage basis for the requested variance.
She also mentioned that others would suffer from an obstruction of their views if the shed is built. Sally noted the suggested pivoting of the building to meet setback requirements would make the obstruction worse.
Mr. Corson noted that if the applicant did pivot the building, the setbacks would be met, she could get a building permit. View retention is not assured or dealt with in the ordinance.
Questioned if it made any difference if it is a request for a shed or garage Mr Adams indicated in the current code there is none. What is a shed is not defined.
Hearing Closed:
Does applicant have a clear interest in the property?
Yes! There is a deed.

The applicant is Alexandra Zaugg-Swafford
5 Ben Webber Road
Map I-04; Lot #59  IR district
Shed is outside of shoreline zoning.

Does the BOAA have jurisdiction?
Yes!

Relevant Applications of the Code - Sec. 204.1.E Definition of a lot line, set backs, and structure are referred to in the rejection letter attached to the Hearing material.
Varience request is defined under sec. 602.3.

Review of application:
Motion was made by Runge, 2nd by Corson ; That the Applicant has incurred significant economic damage due to the rejection. 4 against the motion, one abstained. Motion failed.
Motion made by McLean, 2nd by Corson: Applicant should be granted a variance due to unique circumstances of the property. Motion passed 5 to 0.
Motion was made by Stevens, 2nd Corson: That the granting of a variance will not produce an undesirable change in the character of the neighborhood.
The Board voted zero in favor and 5 opposed.
Motion was made by Stevens and 2nd by Corson: The practical difficulty is not the result of action taken by the applicant.
5 voted in agreement with the motion.
Motion made by Stevens and 2nd by McLean : No other feasible alternative to the variance is available to the applicant: All five members rejected the motion.
Motion was made Stevens, 2nd by Corson: Granting of a variance will not adversely affect the natural environment: Vote was 4 to 1 in favor of the motion.
Motion made by Stevens, 2nd by McLean: That the property is not located in whole or in part within the shoreline areas as described in Title 38, Section 435: 4 approved the motion, one abstained.
Chairman Rice asked the board to determine if a variance should be granted.
All five members voted against granting a variance to the setback requirements,

Meeting adjourned at 8:00PM

Respectfully Submitted:

Tad Runge
Secretary

Findings of Fact are attached:
Town of Chebeague Island
192 North Road
Chebeague Island, ME 04017
codeoffice@chebeague.net
www.townofchebeagueisland.org

Findings of Fact & Conclusion of Law

Date: September 18, 2015
Application Type: Setback Variance
Owners Name: Alexandra Zaugg-Swafford
Located at: 5 Ben Webber Road
Zoning District: Island Residential (IR), Limit Residential Shoreland (LR)

Dear Ms. Zaugg-Swafford,

This is to inform you that the Board of Adjustments and Appeals has acted on your application for a variance as follows:

**FINDINGS OF FACT:**

- The owner of the property is Alexandra Zaugg-Swafford
- The applicant has demonstrated standing by proof of a recorded deed in the Cumberland County Registry of Deeds, Book 24770, Page 217.
- The Board has demonstrated jurisdiction through section 603.2.B of the Chebeague Island Land Use Code.
- The Board concluded that there are no conflicts of interest between the any Board members and the applicant.
- The property is located at 5 Ben Webber Road Chebeague Island, Maine, in the Island Residential Zoning District (IR) and Limit Residential Shoreland (LR). It is identified as Assessor’s Map I-04, Lot 59, and contains approximately .44 acres. The shed appears to be located outside of the LR Shoreland Zone.
- An application for variance was received on August 24, 2015.
- The Board held a public hearing was held on September 16, 2015.
- Relevant sections of the ordinance are sections: 110.94 Lot line, 110.143b Setback, 110.153 Structure, and 204.1.E Lot Standards.
- The property owner was denied a permit for a twelve foot (12’) by twenty foot (20’) shed as noted on the building permit application dated September 19, 2014.
- Abutter Sally Tubbens, 63 Capps Rd., spoke and voiced her opposition to the requested for a variance.
- The Board read and acknowledged two letters via email from abutters:
  - Emily Gaston Muller representing the Gaston Family Trust, 52 Capps Road - opposed the request.
  - Joseph R. Chamberlin, representing his father J. Lockwood Chamberlin, 4 Artist Pt. Rd. opposed the request.

**The Board voted on the following findings:**

- The Applicant has incurred significant economic damage due to the variance. Vote 0-4-1 (Stevens abstained) motion failed

- The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood, Vote 5-0, motion passed
The granting of the 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 properties. Vote 0-5, motion failed.

The practical difficulty is not the result of action taken by the applicant or a prior owner. Vote 5-0, motion passed.

No other feasible alternatives are available to the applicant. Vote 0-5, motion failed.

The granting of a variance will not unreasonably adversely affects the natural environment. Vote 4-1 (McLean), motion passed.

The shed appears to be not located within the Shoreland Zoning overlay district, Vote 4-0-1, (McLean abstained), motion passed.

CONCLUSION:

The proposed location of the shed appears to not be located in the LR Shoreland Zone. The structure is defined as a shed, even though it appears the structure may be a garage. The setbacks for a shed located in the IR zoning district on a non-conforming lot of record is twenty five foot (25') front, fifteen foot (15') side and rear lot line setbacks. The applicant is requesting a variance for a twelve foot (12') rear setback and a ten foot (10') side setback. There appear to be other locations on the lot to locate the shed to meet the setbacks, and the proposed location would affect neighboring properties.

DECISION:

Based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted to deny the variance application.

This decision can be appealed in the Superior Court within 45 days.

Respectfully submitted,

Tad Runge
Secretary of the Board