BOARD of ADJUSTMENTS and APPEALS
Minutes of December 12, 2016 Hearing
Chebeague Island Hall

Attending:
Board Members: Peter Rice, Chair; Charles Hall, Sandra McLean, Tad Runge
Town of Chebeague: Nick Adams, Code Enforcement Officer (CEO) and Gloria Brown,
Town Clerk
Public: Herb Maine and Geoff Summa

Meeting called to order at 6:00PM

First order of business was the nomination and election of Board officers for 2017.
Tad Runge was renominated for secretary. Nomination approved by a unanimous vote.
Peter Rice was renominated for chair. Nomination approved by unanimous vote.
Charles Hall was nominated for Vice Chair. Nomination approved by all.

Purpose of the Hearing:
To hear the appeal of Joseph Chamberlain and the appeal of Elizabeth Gaston to the granting
of a Building Permit - #16B-37 (BP) to Alexandra Zaugg-Swafford, 5 Ben Webber Road by the
Town of Chebeague Island.

It was judged that the appeals were submitted in a timely fashion - met the time requirements.
Appeals were complete and fees had been paid.
The appellants have standing and the Board has jurisdiction to review the Appeals.

The Board was canvased for possible conflicts of interest. There were none.

The hearing was opened.
The issue was whether the CEO should have issued Building Permit #16B-37 (BP).
Could it be proven that the BP was issued contrary to the Ordinance and was unsupported by
substantial evidence in record.
The appellants have the burden of proof to show that the CEO should not have issued it.

CEO Comments:
CEO summarized the timing of the request for the BP for the 12’ x 24’ Swafford shed - What
was submitted and the process followed.
Based on the professional land survey submitted and the proposed plot plan the shed’s location
met all required Code/Shoreline Zoning set backs.
The BP was Issued on the 28th of October with the restriction that it must not be built on an
existing subsurface septic system.
Neighbors were contacted about the approved BP by the Town.
Two appeals were submitted in a timely fashion by the above appellants.

Appellants Comments:
Mr. Chamberlain reviewed his concerns which he covered in his appeal (attached - Exhibit A.
The existence to 2 conflicting professional surveys was emphasized, with the appellant’s
claiming the approved shed does not meet the setback requirements if their survey is used. The
CEO indicated he has to use the one submitted by the applicant for the BP if it is a professional survey.
Regarding the possible use of the shed as a garage. It was determined that there is nothing in the code that differentiates or defines either of these accessory buildings other than a building used by vehicles is required to have a cement floor.
Member Hall reviewec a previous Board effort to deal with a definition for a shed in a similar 5 year old request by the CI Boat Yard and that no definition or differentiation between types of accessory building was decided.
Mr Chamberlain also exposed the concern of traditional views being blocked by the approved shed and that other neighbors were opposed to the building of the shed.

Elizabeth Gaston passed out a paper to the Board with 14 points contesting the approved shed (Attached Exhibit 2)
Ms. Gaston reviewed them for the Board.
In response to a request by Member McLean the CEO distributed a likeness of the shed that had been included with the Swafford BP application.
The septic situation was mentioned. Appellants wanting to make sure the shed was not built on the system.
How does one determine where the system is located was asked? CEO reviewed the code regarding building near septic systems.
BP was issued with a warning that shed could not be built on such a system.
Mr Chamberlain mentioned how the neighbors have tried over the years to work with Ms. Swafford, but those efforts had failed.

Hearing closed at 6:40PM and Board deliberated.
The Chair canvassed each the of the Board members regarding their opinion and if they had any further questions.
Runge, Hall and McLean indicated that they felt that the BP had been properly issued based the existing Code.
Rice indicated that his heart goes out to those who will experience the elimination of views they have always enjoyed, but the Board has no authority above the Code.
Runge made a motion, seconded by McLean: To accept the Appeals by Chamberlain and Gaston and to not grant the BP issued to built a shed by the CEO to Zaugg-Swafford.
Motion was rejected 4 to 0.
By a 4 in favor to 0 vote the Board denied the two Appeals and indicated that the BP had been properly issued.

FINDINGS IN FACT:
(See Attached Exhibit #3)
November 25, 2016

Subject: Appeal of building permit for shed at 5 Ben Webber Rd., Chebeague Island, Maine

To: Board of Appeals, Town of Chebeague Island, ME

Dear Board of Appeals Members

I am contacting you as financial power of attorney for my father J. Lockwood Chamberlin, who is one of owners of a summer cottage at 4 Artist Point Rd., Chebeague Island, ME. My purpose in contacting you is to appeal the permit granted by the Town of Chebeague on October 28 to Alexandra Zaugg-Swafford for a shed at 5 Ben Webber Rd which is immediately adjacent to the property at 4 Artist Pt. Rd.

My reasons for appealing the building permit are as follows:

1. Based on the attached building permit issued to Ms. Zaugg-Swafford, which was provided to me by the Chebeague code enforcement officer Nick Adams, the Town of Chebeague granted a permit for a shed. However, Ms. Zaugg-Swafford has verbally communicated to several of her neighbors that she intends to use the “shed” as a single car garage. She has also stated this in writing to one of the other owners of the cottage at 4 Artist Pt. Rd. Based on discussions with the Chebeague Code Enforcement Office, it is my understanding that a permit for a shed would not apply to a garage due to different building codes.

2. Based on the attached survey provided by Ms. Zaugg-Swafford to the Town of Chebeague in support of her permit request, the shed will be sited in violation of the required 15 feet setback from our property based on a survey the Chamberlin family had conducted in 2011. Our survey was provided to the Town of Chebeague in fall 2015. There is a discrepancy between the two surveys over the location of one end of the legal boundary line between the Chamberlin and Zaugg-Swafford properties (next to Capp’s driveway). Ms. Zaugg-Swafford’s surveyor made her aware of this discrepancy, but Ms. Zaugg-Swafford still elected to request a permit for her shed in a location that created the potential for future litigation over the location of the property line. I would like to avoid litigation.

3. Based on the building permit approved by the Town of Chebeague, the building will significantly block the view of Hamilton Cove from our property. This will decrease our property value and also negatively impact the view by several of her neighbors.

4. The 12 ft x 24 ft (almost 300 sqft) dimensions of the building approved by the Town of Chebeague seem excessive for a storage “shed”. These dimensions are more appropriate for a single car garage.

Although perhaps not grounds for appeal, construction of this shed in the approved location and at the approved size will create ill will with several of Ms. Zaugg-Swafford’s immediate neighbors who are
opposed to its construction. They have verbally communicated their opposition to me, and I believe they have politely tried to inform Ms. Zaug-Swaftord about their concerns. Based on my discussions with her, I do not believe that Ms. Zaug-Swaftord recognizes the degree to which construction of this building at its current location and size will damage her relationships with my family and her other neighbors.

For the above reasons, I am requesting that the Board of Appeals reject the building permit granted by the Town of Chebeague to Ms. Zaug-Swaftord at 5 Ben Webber Rd..

I do not wish to prevent Ms. Zaug-Swaftord from constructing a storage shed on her property. However, I do not believe that she requires a 12’ X 24’ building if its only purpose is to serve as a storage shed, or that it needs to be in the permitted location. Given the size of her property, I think that with a little effort, Ms. Zaug-Swaftord could site a reasonably sized storage shed in a location that would not create the potential for a building code violation or a property line dispute, decrease the value of her neighbor’s property or damage relationships with her neighbors.

Sincerely,

[Signature]

Joseph R. Chamberlin, POA
1601 Old Springs Ct.
Snellville, GA 30078
Application for Administrative Appeal to Board of Appeals

1. Name of Appellant: Joseph R. Chamberlin

2. Mailing Address: 1601 Old Springs Ct., Snellville, GA 30078

3. Telephone: 770 736 4288

4. Name of Owner of Property Which is Subject of Appeal: Alexandra Zaugg-Swafford

5. Please describe in detail the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the board of appeals to take in this matter. If additional space is needed, please continue on a separate sheet of paper and attach it to this application.

Please see attached document

I certify that the information contained in this application is true to the best of my knowledge and belief.

Date: November 25, 2016

Signature of Appellant

3-1-1
November 30, 2016

Mr. Nick Adams
Code Enforcement Officer
Town of Chebeague
192 North Road
Chebeague Island, ME 04017

Dear Mr. Adams,

I am writing as trustee of the Gaston Family Island Trust, 57 Capps Road, Chebeague, to present our Application for Administrative Appeal to the Board of Appeals, appealing the Residential Building Permit for a shed at 5 Ben Webber Road, Chebeague. See attached documents. Also enclosed is my check for $100.00 which I understand is needed to file this appeal.

Will you please notify me by phone or email (see above) when the date and time are set for the appeal? My sister Emily Gaston Muller and I want to attend the Board of Appeals meeting where this appeal is addressed, if at all possible.

Thank you for your assistance.

Sincerely,

[Signature]

Elizabeth H. Gaston, Trustee
Gaston Family Island Trust
Talking Points for Application for Appeal

1. The Gaston Family Trust is an aggrieved party under section 110.3j of the Chebeague Code, and I am the trustee of the Gaston Family Trust. Our property is directly affected by the granting of the permit for construction of a “shed” on the Zaugg-Swafford property. I have provided a copy of the first page of the Gaston Family Trust as well as an affidavit as to my change of name. Additionally, I have here a copy of the deed also listing myself as Trustee.

2. Alexandra Zaugg-Swafford obtained a Residential Building Permit on October 28, 2016. The permit allows the installation of a 12’ by 24’ “shed”, of which “no part of the shed shall be located on any portion of the subsurface wastewater disposal system.”

3. An appeal may be made when “based on a claim that the true intent of the code . . . has been incorrectly interpreted”. The Chebeague Island “Building Code: Adoption and Enforcement Ordinance of the Town of Chebeague Island” incorporates the Maine Uniform Building and Energy Code, which adopts the International Building Code 2009.

4. In the International Building Code 2009 a shed is classified as being for “Utility and Miscellaneous” and falls under Group U. A garage is classified as being “Low Hazard Storage” and falls under Group S-2. These two groups have different standards of construction.

5. Alexandra Zaugg-Swafford has been less than truthful with the Town of Chebeague in her application processes. A year ago she applied to the Board of Adjustment and Appeals for a Variance due to Practical Difficulty. In this application she indicated that she needed the variance to build a structure “to store gardening items, boats, boat gear”. In this current application she has again apparently applied for a permit to build a “shed”. In neither application has she mentioned what she has consistently told the neighbors since purchasing the property in 2007, that she wants to build a garage to garage her vehicle over the winter. Currently her vehicle is garaged during the off season in the garage at her Mother’s property off Soule Road. The size of the building, the size of the door on the previous application for a variance, and the height of the building all are consistent with her desire to garage her vehicle. Further, we are told that the building
will replicate the garage built on the Bradish/Paul property, a building with a second floor loft and a tall roof-line.

6. The Building Permit which is the subject of this appeal limits the so-called shed to 1 story. What is the plan for the roof line? What steps will be taken to insure that the use of the building is consistent with the construction of a shed for utility and maintenance? If the Town of Chebeague opts to leave this permit as it stands, can it be modified to limit the size of the door such that no door can be wider than four feet, thereby disallowing the garaging of a vehicle in the “shed”? What is the recourse to the neighbors if a vehicle is garaged in a “shed” instead of a building constructed as a “low hazard storage”? Is the Town liable for enforcing their building code if Ms. Zaugg-Swafford is in violation? We believe it is the business of the Town of Chebeague to verify that Ms. Zaugg-Swafford’s intent is to garage her car in this building and act accordingly.

7. No portion of this building is to infringe on the subsurface wastewater disposal system. The very placement of the flags marking the corners of the footprint of the building on her land indicate that this could be a very real infringement on the subsurface wastewater disposal system. Moreover, the neighbors have been told that the driveway for the so-called “shed”, intended to garage a vehicle, will traverse the back of the property below the large maple tree on the corner and over to the so-called “shed”. What is to insure that this planned driveway does not infringe on the subsurface wastewater disposal system?

8. Joe: Most of the Chamberlin family is united in refusing to allow access across their land to this “shed”, not only for access once it is built, but also for the building of it. All construction needs to be carried out from Ben Webber Road. No trucks, no materials, no access at all is to be allowed on Chamberlin land.

9. My Mother, Margaret Gaston, understands that issues of view corridors are not considered by this board. However, she wishes to be heard on this matter, and I speak for her at this time. Margaret Gaston and her husband purchased our property in 1957, buying into a neighborhood that had been unchanged for years. The same buildings have existed since the early 20th century. Discreet changes have been made over the years – an addition was built on our home in the early 1980s at the back of the house, barring
no view of the ocean and carrying the architectural features of the main cottage, so that it blended in with existing architecture in the area. The Hubbells built a garage in a wooded portion of their property, now more cleared, but still unobtrusive. The Reads recently placed a shed at the back of their property, again unobtrusive. The Stelles built an addition to the original cottage on the Zaugg-Swafford land which eliminated the view of their elegant little cottage and created a modern attached bedroom and bath. uninspired architecture as it is, it did not, at least, diminish Mother’s view of the ocean.

10. In Ms. Zaugg-Swafford’s previous Variance Application, she claimed placing a building in the corner of the property near this location would “maximally preserve the neighborhood view ‘corridors’, already off neighbor’s driveway, and tucked under trees” (sic). Now that the flags have been positioned at the corners of the current proposed building footprint, one can see that from our cottage the view of the ocean between the Zaugg-Swafford complex and the Capps Cottage will be cut almost in half. This is the area that Margaret Gaston calls her “window”. From her seat on the swing, her “window” will be closed by a half. In addition to that she will have to look at a glaring new “shed”. This violates the trust between Margaret Gaston and Alexandra Zaugg-Swafford, as Ms. Zaugg-Swafford had promised Mother to not eliminate her view.

11. As to the interruptions of the other view corridors as one circles the proposed building site, they are several. From the Chamberlin property and for those traversing the private driveway to the Tubbesing/Merchant property, the proposed building would totally eliminate a lovely view across the Zaugg-Swafford land to Hamilton Beach and the anchorage in the cove. From the Tubbesing/Merchant property, the proposed building would block their view of our house and other views down Capps Road. For those using Ben Webber Road, the building would block current views. From the Jennifer Hubbell and Read properties, the proposed building would block views toward the coast and the Tubbesing/Merchant property.

12. There is a scenic vista at the end of Capps Road, which road is used and which view is appreciated by pedestrians, bikers, and motor vehicles alike. The scenic vista would be forever altered by the siting of this large, utilitarian building on Ms. Zaugg-Swafford’s land.
13. Ms. Zaugg-Swafford has single-mindedly pursued this goal of building a garage. Yet, she reportedly told the surveyor that she did not want to upset the neighborhood. The immediate neighbors are uniformly against the proposed building as either a shed or garage. She should be aware that moving forward along this course of action against the wishes of the neighbors will indeed upset them even further.

14. To conclude, we are asking that the building permit for a “shed” be revoked as Ms. Zaugg-Swafford, by all accounts, is building a garage. If a person has been untruthful on applications to the town for variance and building permits, why should such permits be granted? However, if the building permit is not revoked, we ask that it be modified such that no door will be wider than 4 feet, and such that no vehicle may be stored in the “shed”.
Findings of Fact & Conclusion of Law

Date: December 16, 2016  
Application Type: Administrative Appeal  
Owners Name: Alexandra Zaugg-Swafford  
Located at: 5 Ben Webber Road  
Zoning District: Island Residential (IR), Limit Residential Shoreland (LR)

Dear Mr. Chamberlin and Ms. Gaston,

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

**FINDINGS OF FACT:**

- The owner of the property is Alexandra Zaugg-Swafford.
- Mr. Chamberlin has demonstrated standing, with a power of attorney document for his father J. Lockwood Chamberlin and a recorded deed in the Cumberland County Registry of Deeds, Book 12573, Page 019, for the abutting property at 4 Artist Point Road.
- Ms. Gaston has demonstrated standing with a certificate of trust, for the Gaston Family Island Trust and a recorded deed in the Cumberland County Registry of Deeds, Book 12194, Page 023, for the abutting property at 57 Capps Road.
- The Board has demonstrated jurisdiction through section Ch. 17 Art. II, § 603.2.A of the Town Chebeague Island Zoning Ordinance (Zoning Ordinance).
- The Board concluded that there are no conflicts of interest between the any Board members and the applicants.
- 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 0.44 acres. The shed appears to be located outside of the LR zone.
- Ms. Zaugg-Swafford applied for a building permit “to construct a 12’ x 24’ outbuilding for storage” on October 17, 2016.
- Code Enforcement Officer (CEO), Nicholas L. Adams, issued a building permit for a “12’ x 24’ shed, no part of the shed shall be located on any portion of the subsurface wastewater disposal system” on October 28, 2016.
- Mr. Chamberlin’s application for administrative appeal was received on November 25, 2016.
- Ms. Gaston’s application for administrative appeal was received on November 30, 2016.
- The Town Clerk mailed notices to all abutters within five hundred (500’) feet and posted the notice at the Town Office on December 2, 2016. Additionally, the notice of the hearing was posted in the Portland Press Herald on December 3, 2016.
- The Board held a public hearing on December 12, 2016, Mr. Chamberlin and Ms. Gaston were present.
- The appellants raised and argued the following:
  - The proposed shed is actually a garage,
  - The location of the shed is within the fifteen (15’) foot lot line setback of a disputed property line,
  - The proposed shed may be located on a portion of the subsurface wastewater disposal system, and
The location of the shed obstructed their view and would adversely affect their property values.

- Relevant sections of the Zoning Ordinance are:
  - Ch. 17 Art. II, § 204.1.(A).8, accessory buildings to single family homes are a permitted use in the IR Zoning District.
  - Ch. 17 Art. II, § 204.1.(E), 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.

**CONCLUSION:**

The Board reviewed the evidence and found that there was substantial evidence in the record supporting the issuance of the building permit by the CEO and that the issuance of the permit was not in contrary to the Zoning Ordinance. The Board found that they do not have jurisdiction to decide questions related to the “Building Code; Adoption and Enforcement Ordinance”, that the Town does not have an ordinance defining size and placement of residential sheds that impede on neighbors views, and according to the plot plan submitted with the permit application, the shed does not violate the minimum setback requirements to lot lines and the shed was not located on the subsurface wastewater disposal system.

**DECISION:**

Therefore, based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted unanimously to deny your administrative appeal application.

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

Respectfully submitted,

[Signature]

Tad Runge
Secretary of the Board