BOARD OF ADJUSTMENTS AND APPEALS
Minutes of the November 2, 2017 Public Hearing
Chebeague Island Recreation Center

Attending:
Board Members, Peter Rice, Chair, Charles Hall (arrived at 7:09 PM), Sandra McLean, Alfred “Tad” Runge, Cheryl Stevens
Town of Chebeague Island: Marjorie Stratton, Town Administrator, Gloria Brown, Deputy Clerk

Call to Order: Chair Peter Rice called the meeting to order at 6:10 PM.

Quorum of four members

Approve Minutes:
Motion: Moved by Sandra McLean, seconded by Tad Runge to approve the minutes of the June 22, 2017 meeting.
Vote: 4-0 (Charles Hall had not yet arrived.)

New Business

I. Hearing on Variance for Laurence (“Corky”) & Carla Clarke Map, I05 Lot 018
• No conflicts of interest on the Board
• Proper notice was given
• The Board of Adjustment and Appeals does have jurisdiction
• CEO comments: none
• Appellants do have right, title and interest in the property
• Presentation by Appellants: Corky and Carla gave a summary of their project and explained why they were asking for the variance.
• Letters from abutters were reviewed (see record)
  o Emails from Anne, David, John and Judith Morse; all opposed (see record)
  o Ted Morse is not opposed
  o Four out of five Morse Family members opposed to the project.
• Questions by Board members
  o Aesthetic and historical characteristics of the neighborhood
  o Differences of opinion about diminished view by abutters
  o Whether a variance would reduce the value of abutters’ property
• Comments/questions by others
  o There is no guarantee of “a view” in the ordinance
  o Board’s discretion is in the ordinance wording “substantially” and “unreasonably.”
• Peter closed the hearing at 6:35 PM.
• Deliberations
  o Tad asked if the garage couldn’t be built within the prescribed side setback, without the need for a variance. There is no hardship shown.
  o Sandra would prefer to see the project built within the code setback.
  o Cheryl concurred, even though locating the building within the code setback may actually affect the abutters adversely.
  o Tad asked about feasibility of alternative locations on the lot.

Motion: Moved by Tad, seconded by Sandra, to approve the variance as requested, for the side setback.
Vote: 0-4 (Charles Hall had not yet arrived); variance not approved
Findings of Fact

- The owner of the property is Laurence and Carla Clarke.
- Mr. and Mrs. Clarke have demonstrated standing with a recorded deed in the Cumberland County Registry of Deeds, Book 30758, Page 158.
- The Board has jurisdiction through Section Ch. 17 Art. II, § 604.3.B of the Town of Chebeague Island Zoning Ordinance (Zoning Ordinance).
- The property is located at 13 Cottage Road, Chebeague Island, Maine, in the Island Residential Zoning District (IR) and Limited Residential Shoreland Zoning District (LR). It is identified on Assessor’s Tax Map I-05, Lot 18, and contains approximately one point twenty-six (1.26) acres.
- Mr. and Mrs. Clarke application for a practical difficulty setback variance was received on October 3, 2017.
- The Town Clerk mailed notices to all abutters within five hundred (500’) feet and posted the notice at the Town Office on October 13, 2017. Additionally, the Town Clerk placed a notice in the Northern Edition of the Forecaster, a newspaper of general circulation on October 26, 2017. The Board held a public hearing on November 2, 2017; Laurence and Carla Clarke were present.
- There were public comments
- At the November 2, 2017 hearing the Board found the application to be complete.
- Written and oral testimony was included as part of the record
- Relevant section of the Zoning Ordinance are:
  - Ch. 17 Art. II, § 100, definitions of Practical Difficulty, Lot Line and Setback
  - Ch. 17 Art. II, § 204.1.(C).1. Lot Standards for IR Zoning District

CONCLUSION

Practical difficulty shall mean that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner. An applicant for a practical difficulty variance must show compliance with the following standards:

A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
Based on this information and in the record, the Board finds that this criterion will be met.

B. The granting of a variance will not unreasonably produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
Based on this information and in the record, the Board finds that this criterion will be met.

C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
Based on this information and in the record, the Board finds that this criterion will not be met.

D. No other feasible alternative to a variance is available to the petitioner;
Based on this information and in the record, the Board finds that this criterion will not be met.
E. The granting of a variance will not unreasonably adversely affect the natural environment; and

Based on this information and in the record, the Board finds that this criterion will be met.

F. The property is not located in whole or in part within the shoreland areas as described in 38 M.R.S. § 435.

The Proposed Garage appears to be not located within the Shoreland overlay district. Based on this information and in the record the Board finds that this criterion will be met.

Motion: Moved by Tad Runge, seconded by Sandra McLean, to approve the variance as requested, for the side setback.

Vote: Yes: 0  No: 4 (Charles Hall had not yet arrived); variance not approved

Decision

The Board reviewed the evidence and found that there was substantial evidence in the record supporting the denial of a side practical difficulty lot line variances and based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted (0-4) to deny your practical difficulty lot line variance for 9 foot side lot line setback variance.

Motion: Moved by Tad Runge, seconded by Sandra McLean, to approve the Findings of Fact and Conclusion.

Vote: Yes: 4  No: 0 (Charles Hall had not yet arrived); variance not approved

II. Hearing on Variance for Cecil Amos Doughty Map I01 Lot 075A (re-appeal)

- Peter opened the hearing at 6:40 PM
- The variance was granted on March 23, 2017. However the Findings of Fact and Conclusions of Law were not filed in the Registry of Deeds; therefore the variance expired and the applicant is back for a re-hearing.
- No conflicts of interest on the Board
- Proper notice was given.
- Jurisdiction of the Board of Adjustment and Appeals: Bob Earnest questioned the Board’s authority. The Board referred to the ordinance sections cited and discussed them with Code Enforcement Officer Nick Adams via cell phone. Chairman Peter Rice decided to move forward with hearing the application.
- Board Member Charles Hall arrived at 7:09 PM.
- Gilbert “Specs” Eaton presented Cecil’s application. He asked that the Board grant the variance again for the same reasons presented in March. He went through the variance criteria. (see record)
- This time, the Board received letters in opposition to the variance from William Dougherty and Marian Cox-Chapman.
- Questions and discussion by Board members and members of the public
  - The location of the roads that access the property, South Shore Road/Old County Road, a private road/right-of-way to Black’s Cove, Deer Point Road and Proctor Drive, and who has rights to use those ways.
  - Atty. Devine presented a map showing the roads being discussed and summarized his clients’ concerns. The letter requests a condition of approval of the variance to be access to the property will be by Proctor Drive.

Cecil Amos Doughty withdrew his application for the variance. He may apply in the future. Peter closed the hearing at 7:52 PM.
III. Hearing for Request for Special Exception Solar Array Installation

- Peter opened the hearing at 8:00 PM.
- No conflicts of interest on the Board
- Proper notice was given.
- Jurisdiction of the Board of Adjustment and Appeals: Zoning Ordinance § 603.2.C.
- Steve Hinchman, Chief Counsel for ReVision Energy, presented the project.
- Questions by board members re: projected output (about 90% of the Town’s annual electrical need) and why a special exception is needed. (Solar Array is not one of the permitted uses in the Town’s Zoning Ordinance for this district.)
- Abutters and others directly affected: Peter reported that he had received an email from John Wilson in support of the project (see record).
- Questions from the public re: exact location of the project on the town garage property.
- Peter closed the hearing at 8:14.
- Deliberations:
  Motion: Moved by Tad Runge, seconded by Charles Hall, to approve the application for a special exception for the solar array installation.
  **Vote: Yes: 5  No: 0; special exception approved**

FINDINGS OF FACT

The project description and Pre-Hearing Findings of Fact were read aloud and affirmed by Board members, with the condition that the executed Power Purchase Agreement be entered in the record with seven days, and the amendment of the last item to say the Board found the application to be complete. A site walk was not discussed.

Ch. 17 Art. II, § 603.2.C. SPECIAL EXCEPTION REVIEW STANDARDS

1. The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles.
   **Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds the proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles.
   **Vote: Yes: 5, No: 0**

2. The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;
   **Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds the proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result.
   **Vote: Yes: 5, No: 0**

3. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
   **Motion:** Moved by Charles Hall, seconded by Tad Runge, the Board finds, based on the information in the record, that this criterion will be met.
   **Vote: Yes: 5, No: 0**
4. The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

**Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds the proposed use is compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties.

**Vote:** Yes: 5, No: 0

5. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

**Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds, based on the information in the record, the proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties.

**Vote:** Yes: 5, No: 0

6. The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

**Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds, based on the information in the record, the proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties.

**Vote:** Yes: 5, No: 0

7. The proposed use has no unusual characteristics atypical of the generic use in the neighborhood, which proposed use will depreciate the economic value of surrounding properties;

**Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board finds, based on the information in the record, the proposed use has no unusual characteristics atypical of the generic use in the neighborhood, which proposed use will depreciate the economic value of surrounding properties.

**Vote:** Yes: 5, No: 0

**Ch. 17 Art. II, § 603.8, Special Exceptions in the Shoreland Zone**

The parcel is not located in any Shoreland zoning district; therefore the Board finds that this section is not applicable.

**Motion:** Moved by Charles Hall, seconded by Tad Runge, the Board finds the parcel is not located in any Shoreland zoning district; therefore, the Board finds that this section is not applicable.

**Vote:** Yes: 5, No: 0
CONCLUSION

Therefore, the Town of Chebeague Island Board of Adjustments and Appeals hereby approves the special exception application for Town of Chebeague Island for the installation of three (3) one hundred and four (104) foot by seventy-six point six (76.6) foot Solar Arrays at the Town of Chebeague Island’s Public Works facility, Tax Map I-06, Lot 06, located at 49 Littlefield Road as described in the application letter and the above findings of facts.

**Motion:** Moved by Tad Runge, seconded by Charles Hall, the Board approves this conclusion and grants the special exception as requested.

**Vote:** Yes: 5, No: 0

Adjournment
The meeting adjourned at 8:19 PM.

Respectfully submitted,

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Alfred Runge
Secretary of the Board