



Town of Chebeague Island

192 North Road
Chebeague Island, ME 04017
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Findings of Fact & Conclusion of Law

Date: December 2, 2022

Application Type: Administrative Appeal

Applicants' Names: James and Anne Gallagher and Norma and Jeffrey Drew

In re property located at: 107 Cottage Rd Tax Map I-01-014

Zoning District: Island Residential (IR)

Dear

This is to inform you that the Board of Adjustment and Appeals has acted on the James and Anne Gallagher and Norma and Jeffrey Drew's application for an administrative appeal as follows:

SUMMARY OF APPEAL

APPLICANTS JAMES AND ANNE GALLAGHER AND NORMA AND JEFFREY DREW HAVE FILED AN ADMINISTRATIVE APPEAL REQUESTING (1) AN EXTENSION OF THE WINDOW OF APPEAL TIME OWING TO THE CODE ENFORCEMENT OFFICER'S DENIAL OF THEIR RIGHT TO DUE PROCESS AND (2) AN APPEAL OF THE CODE ENFORCEMENT OFFICER'S ISSUANCE OF A SHORELAND PROJECT PERMIT APPLICATION (22-SZ-2) for 107 COTTAGE RD Tax Map I01-014

WHETHER THERE IS GOOD CAUSE TO ENLARGE THE 30-DAY DEADLINE TO APPEAL

FINDINGS OF FACT

The Town of Chebeague Island's Zoning and Shoreland Zoning ordinances do not specifically enshrine an abutter or interested party's right to be notified in a timely fashion about pending permits on a neighbor's property.

The Code Enforcement Officer (CEO) admitted to not making the file available to the public in a fashion and a time frame that could allow an interested party to appeal *any* permit pertaining to 107 Cottage Rd.

The CEO also admitted to not returning phone calls and emails from the appellants and their legal representatives in a fashion and a time frame that could allow an interested party to appeal any permit pertaining to 107 Cottage Rd.

There are no records in the file of any of these phone calls or emails.

The CEO admitted to having a full-time job as CEO in Old Orchard Beach and thus having limited time to deal with the issues arising as a result of his part-time job as CEO of the Town of Chebeague Island.

The Board of Adjustment and Appeals (BAA) did not receive the "complete" file on 107 Cottage Rd until the evening of the November 3, 2022, hearing, when the CEO supplied the board with a paper copy.



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The appellants' Exhibit 17 shows a photocopy of an electrical permit application dated 10/21/22 that was not included in the paper file the CEO supplied to the BAA.

The CEO admitted that some of the permits had been "misfiled" and it took him a while to realize it.

The point made by the permittees—that the CEO had office hours on island approximately 14 times between the time of appellants' initial inquiries about the availability of the file and the time they actually received access to the file—is not relevant. The relevant point is that the public file was not available or complete during this period, thus stymying appellants' efforts and ability to file an appeal in the time frame specified in the Zoning Ordinance and denying their right to due process.

CONCLUSIONS

With respect to the first part of the appeal, the BAA has found that there is good cause to extend the window of the appeal to ensure that the appellants' right to due process is not denied.

Although the town's Zoning and Shoreland Zoning ordinances do not specifically enshrine an abutter or interested party's right to be notified in a timely fashion about pending permits on a neighbor's property, the CEO has a duty to make a file available to the public, whether in an actual paper file or a virtual file or both, in a timely fashion. Otherwise, the time frame delineated in the ordinances to make an appeal is meaningless. The CEO did not make the file available in a timely fashion, nor did he promptly answer emails or telephone calls pertaining to this issue.

The following motion was made by Cheryl Stevens and seconded by Tad Runge:

The BAA should approve extending the time of the appeal beyond 30 days.

The BAA voted unanimously (4:0) to **approve** the motion.

WHETHER SHORELAND ZONING PERMIT WAS ISSUED IN ERROR

FINDINGS OF FACT

GENERAL

- Anne and James Gallagher are the owners of 113 Cottage Rd, and Jeffrey and Norma Drew are the owners of 121 Cottage Rd; both are abutters of 107 Cottage Rd.
- Michael and Mary Makee are the owners of 107 Cottage Rd; the lot was deeded in three portions in successive quitclaim deeds from Linda Makee to Michael Makee (granting him one third interest in "Lot 7" [sic]) on 12/17/04 (Cumberland County



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Registry of Deeds Bk 3909; Pg 292); from Shannon Meredith to Michael and Mary Makee for \$1 on 6/13/18 (Bk 35044; Pg 109); and from David Meredith to Michael and Mary Makee for \$27,000 on 8/2/19 (Bk 35883; Pg 196).

- The purpose of the Shoreland Zoning (SZ) Ordinance according to §102 is to “further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; **to control building sites, placement of structures and land uses**; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; **to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.**”
- The SZ Ordinance and the Zoning Ordinance have been enacted to protect and preserve the Town of Chebeague Island (TOCI).
- According to Zoning Ordinance §601.1 and SZ Ordinance §509.2, the CEO’s duty is “to enforce the provisions of this Ordinance.”
- There is no provision in the Zoning or SZ Ordinance allowing the CEO to decide which of the provisions to enforce.
- There is no revision of Zoning Ordinance §601.1 or SZ Ordinance §509.2 to grant the CEO leeway to relax his oversight of the ordinances during pandemic lockdown. The CEO’s duty is to enforce the provisions of the Ordinance regardless of a permit applicant’s personal situation or that of the world at large.
- The CEO admitted to relaxing the rules pertaining to a Shoreland Project Permit Application (SPPA) for the applicants.
- The CEO stated that he “liked to work with property owners to not put overdue burden on them.”
- The ordinance governing the duties of the CEO makes no exception for jobs that are “rushed” or “urgent” or for ones that have “a lot of moving parts.”
- The ordinance governing the duties of the CEO contains no clause advising the CEO not to put overdue burden on applicants.
- SZ Ordinance §503.A and §503.E and Zoning Ordinance §602.1.B specify that each application to the CEO for a permit to erect a new building or structure or to enlarge or to move an existing one **shall** be accompanied by a site plan showing measurements of the lot and of all buildings, yards, and parking spaces, existing and proposed. The intended use or uses of land and building **shall** be indicated clearly.



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- According to SZ and Zoning Ordinance §108, the word “shall” means that the specified instruction is mandatory.
- According to the application checklist on the SPPA, “all of the following information is required and **must** be submitted for all Shoreland Zoning permit applications: scaled plot plan with all lot lines, including existing and proposed changes; tree cutting applications must include a scaled plot plan with all lot lines clearly labeling each tree requesting to be cut, their type, and diameter; all contractors disturbing more than one cubic yard of material must provide a DEP [Department of Environmental Protection] Certification number; right, title, or interest for proposed application.
- The SPPA submitted does not include a scaled plot plan.
- The CEO characterized the plot plan submitted as a “rough drawing” that was “conceptual at the time.”
- Despite the lack of a scaled plot plan, the CEO issued the permit anyway because he “knew a plot plan would be forthcoming.”
- There is no scaled plot plan for the SZ project or for any of the projects approved for 107 Cottage Rd.
- There is no scaled plot plan for tree cutting.
- There are no copies of the three quitclaim deeds cited by the applicant, all of which are needed to establish “right, title, or interest.”
- No contractor DEP Certification number is in the file.
- Because the application form states that “all of the following information is required,” the CEO cannot issue an SZ permit for which the SPPA is incomplete.
- The CEO cannot base his decisions on what the permittees may *someday* do with the lot. The CEO must base permitting decisions on what a given application asks for and **whether** it meets all ordinances.
- According to Zoning Ordinance §601.4 and SZ Ordinance §509.2.C, the CEO **shall keep a complete record of all essential transactions of the office**, including applications submitted, shoreland zoning permits granted or denied, variances granted or denied, revocation actions, revocation of shoreland zoning permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the DEP.
- There is no evidence in the file that any such records were kept nor that any were submitted to the DEP.



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- There is no record of any of the requests for the file, which the CEO characterized as “the most requested file” on the island.
- The entry for “Receipt Number” has been left blank.
- According to TOCI §104 of the Building Codes; Adoption and Enforcement Ordinance, the “Maine Uniform Building and Energy Code is adopted by the Town of Chebeague Island to establish regulations governing construction and repair of residential, commercial, and public structures. The Code Enforcement Officer shall serve as the building official defined in title 25 M.R.S.A. §2371 and shall be responsible for issuing building permits and certificates of occupancy.”
- The 107 Cottage Rd file contains no record of inspection or site visits, nor does it contain a Certificate of Occupancy for the principal structure.
- With respect to how the CEO shall apply the various sections of the SZ Ordinance, the Zoning Ordinance states in §108 and the SZ Ordinance in §107 that “whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the **more restrictive** provision shall control.
- The Maine DEP requires that “any ‘contractor’ working in the municipal Shoreland Zone must ensure an individual certified in Erosion and Sedimentation Control Practices (ESC) by Maine DEP is present on the site during all phases of soil disturbance, and is responsible for the installation and maintenance of any Best Management Practices (BMPs).”
- According to SZ Ordinance §304.2 covering erosion and sedimentation control in the SZ, all activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit **shall also require a written soil erosion and sedimentation control plan**. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for: A. Mulching and revegetation of disturbed soil. B. Temporary runoff control features such as hay bales, silt fencing or diversion ditches. C. Permanent stabilization structures such as retaining walls or rip rap.
- The file contains no written soil erosion and sedimentation control plan.
- The checklist for the SPPA states “All contractors disturbing more than one cubic yard of material must provide a DEP Certification number.”
- The contractor whose credentials were included in the application provided a certificate with no authorized signature or official seal.



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- The CEO admitted to failing to verify that the contractor in charge of overseeing the erosion-control activities in the SZ according to Maine law was in possession of a valid certificate.
- According to the DEP website, this contractor is not on their 2022 list of Individuals Certified in Erosion Control Practices.
- According to John Maclaine, Non-Point Source Training Center Coordinator, Office of the Commissioner, Maine Department of Environmental Protection, "My records show that a certification for Stu Brown at SKB Contracting was certified previously (#1509) but the certification expired 12/31/2018. He would be eligible for reinstatement upon completion of at least 5 Continuing Education Hours" (Appendix A).
- The CEO admitted that he had this uncertified contractor oversee this site and largely relied on the contractor's judgment that work was conducted properly.

CHARACTERISTICS OF THE LOT: NON-CONFORMING VS. CONFORMING LOT

- According to Zoning Ordinance §204.1.C, the following lot standards shall apply to **all lots within the Island Residential (IR) district created on August 1, 1975, or later**: 1. 1.5 acre minimum lot size; 2. In the case of duplex development, there shall be no less than 0.94 acres of lot area per dwelling unit; 3. **There shall be no less than 150 feet of lot frontage** (Appendix B: Chain of Title of Lot 7 and Appendix C: Non-conforming Lot Worksheet).
- According to Zoning Ordinance §204.1.D, the following minimum setbacks are required for all structures in the IR district that are more than 1.5 acres in size or that were created on or after August 1, 1975, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines: 1. Front: 55 feet; 2. Rear: 65 feet; 3. Side: 30 feet—combined width at least 65 feet; 4. **Shoreland setbacks shall be as required by the Shoreland Zoning Ordinance.**
- The 107 Cottage Rd lot was created on **3/17/88** (Cumberland County Registry of Deeds Bk 8214; Page 223)—*after* the date of August 1, 1975, specified for lot standards in §204.1.C—by conveyance by warranty deed of a portion of Lot 7, as identified in the original 1907 subdivision plan (12/28/1907; Bk 816; Pg 391), to Russell and Elda Gwillim. This 1988 split of the property specifically deeded 151 ft of the original 247 ft of road frontage to the new (now Gallagher) lot and 100 ft of the original 218 ft of shore frontage, intending to convey 93,925 sq ft. This caused



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the remaining portion of the lot to become non-conforming with respect to road frontage and shore frontage: **96 ft and 118 ft**, respectively, rather than the required 150 ft and 150 ft.

- Before the 1988 subdivision, Lot 7 was a conforming lot; after subdivision, however, it became non-conforming. In other words this non-conforming lot was created *after the ordinance was adopted and not before*. So the portion of Lot 7 left after the 1988 subdivision did not meet rules in place at the time or rules in place currently because it has never been in compliance and therefore does not meet the definition of a non-conforming lot of record.
- The 107 Cottage Rd lot is non-conforming with respect to **both** road frontage (96 ft rather than the required minimum of 150 ft) and shore frontage (118 ft rather than the required minimum of 150 ft).
- The 107 Cottage Rd lot, as a non-conforming lot created *after* the date of August 1, 1975, specified for lot standards in §204.1.C, has never been a **legal** non-conforming lot according to TOCI's Zoning Ordinance (i.e., a non-conforming lot of record) and therefore cannot be built on at all without a variance granted by the BAA.
- The date of August 1, 1975, was devised by the Town of Cumberland.
- When TOCI became its own town, it adopted the Town of Cumberland's Zoning Ordinance.
- According to Zoning Ordinance §202.2, the Shoreland Zoning Overlay Districts depicted on the Official Zoning Map shall be controlled by the "Shoreland Zoning Ordinance of Chebeague Island" under a separate ordinance. **Whenever there is a conflict between this Ordinance and the Shoreland Zoning Ordinance the more restrictive provision shall control.**
- According to Zoning Ordinance §205.3, **variance of setback requirements shall be obtained only through action of the Board of Adjustment and Appeals.**
- SZ Ordinance §401.1 states that, with respect to non-conforming lots, "A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto *may* be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals."



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- SZ Ordinance §401.1 cannot be applied to 107 Cottage Rd because this lot is not a non-conforming lot of record, nor does it meet the requirements for road frontage, shore frontage, net residential acreage, and, most likely, lot width.
- SZ Ordinance §204.2 specifies the minimum shore frontage as 200 ft, with the additional proviso that the minimum *width* of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland **shall be equal to or greater than the shore frontage requirement for a lot with the proposed use (i.e., 150 ft or greater).**
- The 107 Cottage Rd lot has 118 ft of shore frontage.
- Because the plot plan included with the SPPA is not precise or detailed, whether the width of the lot equals or exceeds 150 ft at its widest point cannot be determined.
- The width of the lot does not *appear* to exceed 150 ft at any point, let alone in the SZ.
- In addition, on a parcel of land with coastal bluffs that have been rated “unstable” or “highly unstable” by the Maine Geological survey (and published on the most recent coastal bluff map), **setback measurements for principal structures shall be taken from the top of that bluff, not the normal high-water line or upland edge of the coastal wetland (§204.3.A.2).**

ZONING

- In numerous cases in Maine, the court has found that “[t]he spirit of zoning ordinances is to restrict rather than to increase any non-conforming uses and to secure their gradual elimination. Accordingly, provisions of a zoning regulation for the continuation of such uses should be strictly construed and provisions limiting nonconforming uses should be liberally construed. The right to continue a nonconforming use is not a perpetual easement to make use of one’s property to the detriment of one’s neighbors and forbidden to them, and nonconforming uses will not be permitted to multiply when they are harmful or improper.” *Lovely v. Zoning Board of Appeals of Presque Isle*, 259 A.2d 666 (Me. 1969); *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984); *Total Quality, Inc. v. Town of Scarborough*, 588 A.2d (Me. 1991); *Chase v. Town of Wells*, 574 A.2d 893 (Me. 1990); *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061.



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- SZ Ordinance §202 states that **where uncertainty exists as to the exact location of district boundary lines, the Board of Adjustment and Appeals shall be the final authority as to location.**
- The district objectives in SZ Ordinance §203 state that no building shall hereafter be erected or altered to house a greater number of families, **or to have a smaller setback, or to occupy a smaller lot,** than is specified herein for the district in which such building is located.
- According to the definition of districts, in SZ Ordinance §204.1.A, **the Resource Protection Overlay District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values.** This district shall include the following areas when they occur within the limits of the Shoreland area, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial, or Commercial Fisheries/Maritime Activities Overlay Districts need not be included within the Resource Protection Overlay District: **3. Areas of two or more contiguous acres with sustained slopes of 20% or greater; and 5. Land areas adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs as shown in the Coastal Bluff maps in Appendix B (of the SZ Ordinance).**
- According to Maine state law §957-A.1.G, a Resource Protection District includes “areas of 2 or more contiguous acres with sustained slopes of 20% or greater.”
- Maine state law §957-A.2.4.A goes on to state “prohibited uses within the Resource Protection District shall include: **structures designed for human habitation; [PL 1979, c. 459, §1 (NEW)].**”
- The SPPA file includes a topographic map that is largely unreadable except to confirm the presence of a steep slope across the property and beginning roughly 250 ft from Cottage Road.
- The lot in question is in the Island Residential/Resource Protection (IR/RP) district, not the IR/Limited Residential (IR/LR) district, as listed on the building permit keyed to the SPPA.
- The location of the accessory structure is in the Coastal Bluff zone, which lists the terrain as “unstable” (Appendix D and SZ Ordinance Appendix B).
- The lot in question is also in the Steep Slopes zone (per topographic map submitted by permittees and Appendix E TOCI Steep Slopes map).
- According to SZ Ordinance §204.3.A.2, for a parcel of land with coastal bluffs that have been rated “unstable” or “highly unstable” by the Maine Geological survey



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(and published on the most recent coastal bluff map), **setback measurements for principal structures shall be taken from the top of that bluff**, not the normal high-water line or upland edge of the coastal wetland.

- Zoning Ordinance §110, in defining net residential acreage, states that net residential acreage shall be determined by *subtracting* from gross acreage available the following: **A. 15% for roads and parking... C. Other areas which are difficult to develop in their natural state because of topography, drainage or subsoil conditions. Specific conditions include but are not limited to: 1. Slopes in excess of 20% sustained for 30,000 square feet or more; 2. Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated 1/10/89 and as amended from time to time.**
- The plot plan, as submitted, does not take the measurement from the top of the Coastal Bluff.
- Thus, net residential acreage of 107 Cottage Rd cannot include any portion below the top of the Coastal Bluff and must also subtract 15 percent for roads and parking.
- The resulting value for net residential acreage, or net usable acres, is perhaps an acre **at most** (an acre is 43,560 sq ft; $96 \times 400 = 38,400$ sq ft, or 0.88 acre; $38,400 \times 0.15 = 5,760$ sq ft; $38,400 - 5,760 = 32,640$ sq ft, or 0.75 acre), but **more likely** three quarters of an acre.
- SZ Ordinance §204.2 requires 30,000 sq ft per dwelling unit. There is already a principal structure on this property. Therefore, there is insufficient net residential acreage to build any accessory structure, even if **all other rules** were met.
- The “driveway extension,” depicted as a dusty swirl, shows no dimensions or even a precise location, so there is no way of knowing how much this considerable incursion into the Coastal Bluff zone will affect this unstable area.
- According to SZ and Zoning Ordinance §110, a driveway shall mean a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.
- The lot includes National Wetlands Inventory wetlands (TOCI Surface Water and Topography Map).

SHORELAND PROJECT PERMIT APPLICATION

- The Growth Permit Application keyed to the SPPA lists the purpose as “Single Family: accessory guest house.”



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- There is already a single-family modular home on the lot, by definition the principal structure. Thus, by definition, the “guest house” is an accessory building, or structure.
- SZ Ordinance §204.2, regarding land uses in the SZ, **states that the Planning Board, not the CEO**, is authorized to approve the building of accessory structures in the RP district provided that *a variance from the setback requirement is obtained from the Board of Adjustment and Appeals and that a person performing any of the following activities receives a permit from the DEP, pursuant to 38 M.R.S. §480-C*, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland and operates in such a manner that material or soil may be washed into them: A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; B. Draining or otherwise dewatering; C. Filling, including adding sand or other material to a sand dune; or D. Any construction or alteration of any permanent structure.
- The CEO was not authorized to approve a SPPA for 107 Cottage Rd.
- The 107 Cottage Rd file contains no application for a variance nor any approval of such a variance by the Board of Adjustment and Appeals.
- The 107 Cottage Rd file contains no approval from the Planning Board for the SPPA or Growth Permit Application.
- The 107 Cottage Rd file contains no “permit from the DEP, pursuant to 38 M.R.S. §480-C,” for activity that “occurs in, on, over or adjacent to any freshwater or coastal wetland and operates in such a manner that material or soil may be washed into them: A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials.”
- SZ Ordinance §204.3.3 states that “on a non-conforming lot of record on which only a residential structure exists, and it is **not possible** to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, **the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.**



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- The accessory guest house is closer to the shoreline than the principal structure and is larger than 80 sq ft in area and 8 ft in height.
- The Growth Permit Application keyed to the SPPA does not include the required septic design.
- The Growth Permit Application does not include the "Lot area square feet."
- All subsurface sewage disposal, including outhouses and gray water systems, must be installed in conformance with the state of Maine Subsurface Wastewater Disposal Rules. The Guidelines require a valid plumbing permit, or a completed application for a permit, when a proposed construction project in the SZ involves sewage disposal.
- The file does not include the required plumbing permit for this Growth Permit Application.
- In the absence of the required septic design, there is no way to know how the effluent and gray water will be transported uphill from the SZ to the existing septic field.
- The building plans provided for the Building Permit Application of the "accessory guest house" in the SZ show three bedrooms, with all meeting the height and space requirements to be deemed bedrooms. The principal structure also shows three bedrooms, for a total of six bedrooms. The existing septic design is for five bedrooms.
- The existing septic plan is inadequate for the accessory structure.
- The SZ Ordinance §503.A and §503.E and Zoning Ordinance §602.1.B require applicants for Building and Growth permits to comply with the following: Each application to the Code Enforcement Officer for a permit to erect a new building or structure or to enlarge or to move an existing one shall be accompanied by a site plan showing the measurements of the lot and of all buildings, yards, and parking spaces, existing and proposed. The intended use or uses of land and building shall be indicated clearly.
- The permittees did not follow the requirements of SZ Ordinance §503.A and §503.E and Zoning Ordinance §602.1.B. The site plan for each permit is thus deficient in numerous areas.
- The submitted site plans must be taken literally, and show only a single tree labeled as such on the property and a second, similar but unlabeled fluffy cloud symbol in the SZ that cannot be assumed also to be a tree.
- Per SZ Ordinance §310 covering streets, roads, and driveways in the SZ, the following standards shall apply to the construction of roads and/or driveways and



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drainage systems, culverts and other related features: §310.A. Roads and driveways shall be set back at seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland **unless no reasonable alternative exists, as determined by the Planning Board....**On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent. §310.C. **New roads and driveways are *prohibited* in a Resource Protection Overlay District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district.**

- There is no evidence in the file that the Planning Board granted such a permit.
- The building of an “accessory guest house” is forbidden in the SZ RP district defined by steep slopes within a coastal bluff zone.
- The plot plan accompanying the SPPA shows no driveway dimensions or even the precise location within the SZ, so there is no way to tell whether the plans are in compliance with SZ Ordinance §310.
- **ADDENDUM**
- **Natalie Bums, Attorney for the TOCI, submitted a memorandum to the BAA on November 28, 2022 (Appendix F).**
- **Keith Richard, Attorney for James and Anne Gallagher and Norma and Jeffrey Drew, submitted a memorandum on December 1, 2022, addressing the points raised in Attorney Bums’ memorandum (Appendix G).**

Conclusions

For the reasons articulated in the findings of facts, the Board of Adjustment and Appeals has concluded the following:

There is good cause to enlarge the time for appeal (4:0) (proposed by Cheryl Stevens and seconded by Tad Runge).

The Code Enforcement Officer’s approval of a Shoreland Project Permit Application for “driveway extension and guest house site” (22-SZ-2) is invalid for reasons including the lack of a scaled plot plan, the lack of a written erosion and sedimentation control plan, and the use of an uncertified DEP contractor (4:0) (proposed by Cheryl Stevens and seconded by Tad Runge).



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Decision

Based on the findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted (4:0) as follows:

The appellants have demonstrated that the time for appeal **SHOULD BE ENLARGED** (4:0).

The Code Enforcement Officer's approval of a Shoreland Project Permit Application for "driveway extension and guest house site" (22-SZ-2) is **REVERSED** (4:0).

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

LIST OF APPENDIXES

APPENDIX A: LETTER FROM JOHN MACLAINE, NON-POINT SOURCE TRAINING CENTER COORDINATOR, OFFICE OF THE COMMISSIONER, MAINE DEP

APPENDIX B: CHAIN OF TITLE OF LOT 7

APPENDIX C: NON-CONFORMING LOT WORKSHEET

APPENDIX D: TOCI COASTAL BLUFFS HAZARDS MAP (INCLUDING SZ APPENDIX B)

APPENDIX E: TOCI STEEP SLOPES MAP

APPENDIX F: MEMORANDUM FROM NATALIE BURNS, TOCI ATTORNEY, DATED 11/28/2022

APPENDIX G: RESPONSE FROM KEITH RICHARD, APPELLANTS' ATTORNEY, DATED 12/1/2022 TO NATALIE BURNS' MEMORANDUM

Date Approved: December 1, 2022

Town of Chebeague Island Board of Adjustments and Appeals

Pursuant to Ch. 17 Art. II, § 603.4.D of the Zoning Ordinance, this decision can be appealed in the Superior Court within forty (45) days.

Respectfully submitted,




Town of Chebeague Island

192 North Road

Chebeague Island, ME 04017

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A.E. Runge
Secretary of the Board