

EDGECOMB PLANNING BOARD
MINUTES, SEPTEMBER 7, 2023
630 P.M.

1. Call to Order

Chair Rebecca Graham called the meeting to order at 6:30 p.m.

2. Roll Call

Members present were John Dunlop, Chair Rebecca Graham, Phil Haas, Cory Mullin, and Paula Swetland.

3. Approval of Minutes

Phil Haas moved to approve the minutes of August 17, 2023. Vote 5-0-0.

4. Sue and Lou Ventura – Building Permit for cottage in shoreland, 13 Modockawando Trail, Map U-11, Lot 13

Sue Ventura said she and her husband have purchased land on Modockawando Trail and have contacted both Rebecca Graham and Code Enforcement Officer George Chase regarding their application for a house in shoreland. They plan to remove and replace the cottage currently existing and put in a new septic system. There was a lengthy discussion regarding setbacks from the water and from the road. The current house is non-conforming as will be the proposed structure. After a lengthy discussion, it was decided that the Planning Board could not waive the setback requirements and approve the application. Paula Swetland moved to reject the new plan because of the (inadequate) setbacks from the road. Vote 5-0-0. The Venturas plan to appeal the decision. (see copy of email below from the chair to the applicant.)

5. Planning Board Training

The chair recommended the members sign up for the MMA Planning Board workshop which can be seen on zoom.

6. Revised Land Use Application

Rebecca Graham said allowing stacked parking would be one way in which the parking issue could be avoided. George Chase suggested changes to the setbacks from the road in certain areas. Graham said that changes to the ordinance would require a public hearing and she recommended all changes be made at the same time to avoid the expense of public hearings. She said the ORC should be addressing necessary changes. She suggested requiring businesses licenses in Edgecomb. She also recommended reconstituting the Ordinance Review Committee.

6. Revised Land Use Application

The revised application will be accompanied by a checklist for the appropriate application. The applicant will fill out the application page and attach the checklist and each item on the checklist for each category

such as Site Plan Review, Shoreland, Subdivision, Solar Installation, etc. The checklists will be completed by the secretary and hard copies will be available at the town office; they will also be available online.

7. Use of Planner's Hours

The selectmen have allocated the cost of 8700 hours for a planner. The planner will assist with the comprehensive plan and other needs. The Lincoln County Regional Planning Commission has applied for a grant to assist Edgecomb with the LD2003 changes. MMA will be holding a session on LD2003 on October 4.

8. Ordinance Review Committee Appointments

9. Review of Ordinance Changes

10. Other Business

11. Adjournment

Phil Haas moved to adjourn the meeting at 8:35 p.m. Vote 5-0-0.

Below is a copy of the email to Sue and Lou Ventura from the chair regarding the denial of their application and the reasons therefor.

Sue & Lou,

It was a pleasure to finally meet you in person last evening. As discussed last evening, the planning board has denied your application for development as submitted due to our inability to waive both the road and easement 75 foot setbacks established in Edgecomb's Land Use Ordinance.

First and foremost, it is important to determine what ordinance provisions apply to this situation. In consultation with Maine Municipal Association's Legal Department they advised the planning board that this application constitutes a reconstruction of a non-conforming structure and not a relocation even though the reconstructed structure will be in a different location than the original. The Law Court considered a similar issue where the entire original structure was being removed and a new one was proposed that was moved further back from the shoreline. The Court held that the relocation portion of the shoreland zoning ordinance did not apply because no portion of the original structure was actually being relocated. (See Osprey Family Trust v. Town of Owls Head, 2016 ME 89.)

Because of this the board is unable to use the section of the ordinances pertaining to relocation in the shoreland zone, specifically section 1.10.1.3 which provides for relocation when the site "conforms to all setback requirements to the greatest practical extent..." While 1.10.1.4. only mentions conformity with the wetland setback requirement "to the greatest practical extent" and goes on to say that the structure cannot "be reconstructed or replaced to increase its non-conformity". The board must use 1.10.1.4 for this application.

As submitted, the plans received on September 7th establish a new structure which would be outside the 75 foot setback from the shoreland and greatly improve both the structure's impact on the Sheepscot River, and move the building out of the 100 year flood plain. The board must use the provisions under

1.10.4 for reconstruction when evaluating the new location proposed which does not provide us with the flexibility to grant a variance as the structure would be more non-conforming than it is now since it would not be setback far enough from Cross Point road or the easement for Modockawando trail. By ordinance, the set back from both roads and easements must be 75 feet from the center line for both which is functionally impossible on your lot. While the current building does not meet this standard for the easement setback at 10 feet away, and the new location would improve the easement setback, it does not meet the 75 foot setback the board must use in this case. Additionally the 50 foot setback from Cross Point road is below the 75 feet needed. The board interprets 1.10.1.4. to not provide the flexibility that the relocation provision does and thus, the planning board has no authority to effectively grant a variance from the road setback requirements and cannot approve the proposed location of the reconstruction.

The unique circumstances of your lot make the proposed plan impossible without a variance for the road set back requirements, even though the proposed plan greatly improves the current shoreland non-conformity of the existing building, would move the building out of the floodplain zone and would be further away from the Modockawando easement and is not out of step with the other legally non-conforming buildings in this neighborhood. You have a right to request a variance from the Board of Appeals for the road and easement setbacks and I have included the application for an appeals hearing to this email.

The Land Use Ordinance p.129 provides the provisions that are required for the Board of Appeals to grant a variance.

Except as provided in subsections a, b and c, the Board of Appeals may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in the subsection means:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;*
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;*
- c. That the granting of a variance will not alter the essential character of the locality; and*
- d. That the hardship is not the result of action taken by the applicant or a prior owner.*

Please feel free to connect with me if you have any further questions.

*Respectfully,
Rebecca*