

Effingham Zoning Board of Adjustment  
Meeting Minutes December 7, 2016

- 5 Present: Jory Augenti, Tim White, Mike Cahalane, Tom Hart, David Strauss,  
Tim Murphy (alternate)  
Minutes prepared by Barbara Thompson

The meeting was called to order at 7:00 pm.

10

**Approval of Minutes:** Jory moved and Tom seconded to approve the minutes of November 2nd as presented. The motion passed.

**Correspondence:** None

15

**Old Business:**

- Mike attended a Budget Committee meeting to defend the ZBA budget for 2017. Mike amended the budget to add a professional line for \$1.00 as he had discovered there are funds available should professional services be needed without having to have a line item amount in the budget.
- Mike also mentioned the board may want to streamline the application's variance criteria to reflect the order in the RSA book. This will be done at a future meeting.

20

- 25 **7:15 Public Hearing:**  
**Cynthia Folsom**  
**Variance Application re: Section 402**  
**Map 105, Lot 6**  
**Case #085**

30

Present: Rebecca Boyden (CEO), Cynthia Folsom (applicant), Russell, Sandra, Patricia, Melinda and Josh Esterbrook, Barbara Gallant (abutters)

(Due to technical difficulties there is no digital record of this hearing.)

35

**Presentation**

Mike explained the procedure for the hearing. He explained the crux of the application is to grant relief for 19' of a 20' setback for the placement of a gazebo and then read the 5 criteria from the application.

40

Cynthia reiterated her explanations of the 5 criteria. She has been working with the Code Enforcement Officer (CEO) to find the best location for the gazebo. She explained the proposed site is behind the 50' setback for shoreland protection and presented the members with a drawing showing the proposed location. She also showed the Esterbrooks where the location of the gazebo would be, which is not near their property line. This is their primary concern.

45

*These minutes are considered draft until approved at a future regular meeting of the ZBA. Any changes or corrections will be noted in the next meeting minutes.*

50 The board reviewed paperwork they requested: any permits, a previous variance case, previous minutes from both the ZBA and PB re: any references to the Folsom property and the property cards for Map 105, Lot 6 and Map 105, Lot 6-1.

55 An issue in this case is whether the gazebo is pre-existing or not. Jory pointed out that the gazebo is totally illegal as no permit was ever issued for its construction and its existence was not known until Mr. Folsom came to the PB in 2011 to try and merge their two lots. The gazebo has been in existence since 2006 and straddled the lot line between the two properties. Jory pointed out that if they had gone through proper procedure the permit never would have been allowed because the gazebo was on the property line and within the setbacks for both properties.

60 The CEO felt that for the purpose of the application this should be considered a pre-existing structure and that generally a new owner is not liable for past transgressions.

65 Mike raised the question if the lot could support the gazebo. The lot is 5000 sq ft which includes the 50' shoreland protection buffer and the existing cottage was built on the footprint of the previous cottage. There is very little wiggle room for the gazebo. His concern is lot density requirements.

70 Tim M. felt the town was remiss in its authority in that the town knew of the gazebo since 2011 but did nothing to rectify the situation. This is not Ms. Folsom's fault. Taxes have been paid on the gazebo all along and he feels relief should be granted.

Jory argued that what matters is that the gazebo is illegal whether taxes have been paid or not.

75 Tim M. left the hearing.

80 Ms. Folsom explained there is no environmental impact and all setbacks are met but one. They have no storage on site and use the gazebo to store their summer equipment for the winter.

85 The discussion turned to hardship and whether this situation is a result of lot configuration or a self-inflicted hardship. On one hand the lot is very small and affected by the required placement of the cottage on a pre-existing footprint and shoreland protection buffer. On the other hand the applicant knew the situation when she bought the lot and can't use that as an excuse to ask the board to basically wipe out a setback of 20'. Ms. Folsom said her lot is unique because a lot of properties around her have been merged into larger lots and that she has left as many trees on the property as possible which limits where the gazebo can go.

90 David brought up the question as to how many lots in the area are as small as hers. Hers is not the only small lot so he questions the uniqueness of hers. The CEO felt there is an argument to be made for hardship because of the merged lots surrounding hers.

*These minutes are considered draft until approved at a future regular meeting of the ZBA. Any changes or corrections will be noted in the next meeting minutes.*

95 Tim W. commented this case is very similar to the Province Shore Campground re: lot size and life style. There are competing needs to protect water quality and life style that has been going on for years. This fact doesn't necessarily meet the criteria but it is to be considered.

100 Mike suggested that at this point, in his opinion, the case is not about the gazebo's existence but its location. He wondered if there could be a statute of limitation on the gazebo as it has been on site for 11 years.

105 David brought up the idea of treating the gazebo as a new structure since Ms. Folsom is a new owner. There was some discussion on this. Mike has a problem treating it as a new structure, the CEO still wants to consider the gazebo a pre-existing structure and Jory still maintains that it's an illegal structure and should possibly be eliminated in some form.

110 One suggestion was to have Ms. Folsom apply for a building permit which would be denied. The gazebo would be removed and then she could reapply for a new gazebo that might fit the property in a better fashion.

Tim W. verbalized the balance of the needs of the community against the wants of the applicant. Which is more important?

115 At this point the CEO was beginning to rethink David's idea of new ownership making the gazebo a new structure and David is considering changing his view to a pre-existing structure.

### **Motion**

120 As it was 9:00 pm Jory motioned to continue open discussion until 9:15 pm and then to continue the hearing to a later date convenient to the board and applicant. Tim W. seconded. The motion passed.

125 They revisited whether the gazebo is legal or not and whether there is a statute of limitation on non-permitted structures. Mike also struggles with the requested 19' setback relief.

Jory summed everything up with two scenarios: remove the gazebo or grant the variance.

130 The questions unresolved in choosing one of these scenarios are:

- The legality of the gazebo (permit, statute of limitations)
- Is it pre-existing?
- Is it new because of a new owner?
- Is there a hardship case?
- 135 • The extent of relief the applicant is seeking (19' out of 20')

Approved 1/4/17  
Approved with changes \_\_\_\_\_  
Unapproved \_\_\_\_\_

**Motion**

140 At 9:15 discussion terminated. Mike moved and David seconded to continue the hearing until Wednesday, December 14th at 7:00 pm. The motion passed.

Jory moved and Tom seconded to adjourn the meeting. The motion passed and the meeting was adjourned at 9:25pm.

*These minutes are considered draft until approved at a future regular meeting of the ZBA. Any changes or corrections will be noted in the next meeting minutes.*