

**Town of Waldoboro  
Board of Appeals Meeting  
Thursday, December 17, 2009, 6:30 p.m.  
Municipal Building – 1600 Atlantic Hwy.**

**PRESENT:** Art Emanuelson, Ed Rengle, Leroy Jones, PDD/CO Patrick Wright, Peter Lynch – representing Town of Waldoboro.

**ABSENT:** Russ Hansen

**PUBLIC:** Philip Cohen, Sam Cohen, Brian Rayback, Gertrude Petrovitz, Ervin Robinson, Greg Peabody, Betty Lou Armstrong, Carleton Johnson, Terry DeWan, Deirdre Schneider, Jean Robinson, W. Scott Armstrong, Andy Benore, Bob Buter.

**I.** Acting Chairman Rengle called the meeting at 6:30pm. Quorum was established.

**II. Variance Request** - Betty Lou Armstrong of 1530 Atlantic highway, Map/Lot U9/15A is requesting a variance for construction of a sign within 12 feet of a side property line. The sign setback is 20 feet from a side property line. The abutters for Betty Lou Armstrong were notified of the meeting. Ms. Armstrong is here to represent her application. It is determined that she has standing and the Board has authority to rule on this with no conflicts of interest.

Chairman Rengle prefaced the application presentation by stating that the real estate, including the sign post is Ms. Armstrong's and different businesses could be listed on a sign that she owns. He suggested that as the owner of the sign, she should obtain the permit, rather than the business owner.

In the Land Use Ordinance book on page 4-15, Article 4, Section N this lists the types of signs allowed in Waldoboro. The sign must be 20 feet from the property line. Subsection 5-D states that each business will have one freestanding sign.

Once the sign became obsolete (Article 4, Section N, subsection 11) the grandfathered status also became obsolete.

A variance cannot be granted because Article 11, Section C expressly states that “The Board of Appeals shall not grant a variance unless it finds that the proposed structure or use would meet all of the standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought.” There is currently another free standing sign on the property. Permitting another sign would be in violation of Article 4.N.5.d.

**MOTION:** Mr. Emanuelson made a motion grant a conditional variance for the period of 7 months due to the unique hardship circumstances that would be upon the business at the location if the sign were required to be removed immediately. Seconded by Mr. Jones and approved 3-0.

**III. Variance Request** - Pierce Atwood, LLP is representing Central Maine Power in a request for a height variance. CMP is proposing constructing 125 power poles ranging from 61 to 79 feet in height. The building height limitation is 42 feet in all districts.

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Mr. Rayback is here to represent CMP. The abutters have all been notified. CMP has standing. The Board has jurisdiction and there are no conflicts of interest. Terry Dewan is also here to speak on behalf of CMP.

CMP is seeking a variance from the height limit. They have 2 applications for the same project. There is a 42-foot height limit on structures in Waldoboro that CMP cannot meet. The conditions of electrical use have changed necessitating this project upgrade. CMP did look at other alternatives such as energy efficiency projects. CMP is subject to safety codes and new standards. Ninety-eight percent (98%) of this project is within existing corridors. Waldoboro is getting an upgrade in existing corridors. No new land or expansion is planned. New poles will be 75-foot tall and will do away with the horizontal H type poles and going with the vertical poles instead. CMP claims transmission lines are exempt in Shoreland Zones. The height of each pole will vary from 61-84 feet. Explanation was given as to why these heights are needed. It is mostly due to safety codes set forth by outside sources other than CMP. According to Mr. Rayback there is no lower cost solution.

Mr. Dewan is a landscape architect for CMP. He did visual impact studies where the lines are being expanded and rebuilt. He presented a slideshow for the Board and the public. CMP will be using existing 150-foot wide corridors and doing away with a single H-frame pole system. They will be putting in 2 transmission poles 50 feet apart within the 150-foot corridor. The lines are only able to sag 25-feet at maximum sag between poles. CMP is willing to improve or minimize the visual impact if possible through landscaping, etc.

Mr. Rayback went over CMP's answers to the practical difficulty requirements. This is primarily woodland, farmland and low residential area where the existing corridor is located. Nothing will change with regards to maintenance. CMP is willing to pay for plantings and to meet with homeowners. He states that the character of the area remains the same as it is now. Mr. Rayback then discussed property value impacts and various studies done on this subject. See their application for the studies. Several portions of the corridor in question are in Shoreland Zoning. Due to this CMP feels they only need the variance for those areas outside of Shoreland Zones. The State sets mandates on Shoreland Zones. This type of project is allowed in Shoreland Zones according to Town and State. Mr. Rayback then quoted some court cases with regards to this issue.

Mr. Sam Cohen states that Article 7F, section 2B in the Land Use Ordinance book does not exempt CMP. Mr. Rayback pointed out where the transmission structures are not subject to height requirements in Shoreland Zoning.

Ms. Gertrude Petrovitz thanked everyone from CMP for coming. She has 60 acres of land, some of which is in the effected corridor. She is not willing to develop her property. She has a very rural area of land. CMP has lines down the middle of her property. She does not want 75-foot high poles installed. She states that there is no tree in the area that can grow tall enough to hide them. She also claims that these lines are a health hazard. She does not want more height or

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more electrical power coming through her property. She states that the project should be relocated to the blueberry fields.

Carleton Johnson is here on behalf of Phillip Cohen. He is a certified residential appraiser for the state of Maine. He makes note of exhibit 7 in the CMP application. He read an excerpt from this article. He presented pictures to the Board with regards to a study Norm Gosselin did in Rockland. Mr. Cohen will be impacted greatly by the raised power lines. Mr. Johnson gives examples of properties for sale in Warren that are not selling well or at all due to power lines in view or crossing over said properties.

Mr. Phillip Cohen spoke. He cleared the western side of his property to have a view of the sunsets from his house. With this proposed project by CMP he will be looking at the power lines. He wants to know why CMP can't go under ground for 200 yards by his house. He feels that CMP should pay the cost for this if that is decided upon. No one has done a study at his house. He states that there is another alternative near his house that CMP hasn't looked at. Mr. Cohen quoted a court case as well. CMP has non-conforming use already and this project would make it more non-conforming. The courts state that non-conformities should attempt to be eliminated or limited.

Mr. Sam Cohen wants the variance denied and to have CMP go before the Town to get the ordinance amended. CMP should be required to compensate property owners. He is willing to transfer ownership of property at Phil Cohen's to allow another alternative.

Mr. Erving Robinson would like to see slide 6 from the slideshow. This is his property. CMP is proposing to move the poles onto his back lawn with their new proposal. CMP did not come speak to him. He states this project will lower his property value.

Mr. Bob Butler is a selectman in Waldoboro, but is not speaking on behalf of the Board of Selectmen. He gave the history of the process CMP has undertaken to date. CMP brought a revised ordinance to the Planning Board, and then the Selectmen. The Selectmen made note of changes needed and thought a revised ordinance was forthcoming. He is surprised at this variance application. He thinks the Town should get an ordinance amendment and vote on it. A variance request is an inappropriate avenue given the enormity of this issue and project. He also stated that the economic injury standard within the practical difficulty test is not met by the applicant.

Mr. Emanuelson asked CMP about the PUC and their input on this project. He would like to see a Town vote on this issue.

Mr. Jones asked if CMP had pursued all options for other alternatives.

CMP is obligated by the PUC to put together a proposal of best, most cost effective solutions. Theoretically there are things that could be done differently, but at great expense.

Chairman Rengle made note of exhibit 6 in the application. He points out a discrepancy in stated home sales in Rockport. He states the material does not support CMP claims of not impacting

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property values. He pointed out studies done elsewhere in the U.S. that mention property values with little or no impact but are vastly different than the properties here in Waldoboro. There are no cluster housings in North Waldoboro. The material does not support the claims made by CMP.

Other notes made Chairman Rengle are that due to a small, 5-house, appraisal survey, small 115K lines and caution not to use appraisal studies, he believes that this material does not support CMP's claim. Due to the fact that North Waldoboro is not a cluster housing aggregate, he believes the application material does not support CMP's claim. Due to the conclusions outlined in Des Rosier 2002 report of the CMP application, he believes this material does not support CMP's claims.

Chairman Rengle asked if CMP was prepared to offer monetary compensation to landowners. The answer was no.

**MOTION:** Chairman Rengle made a motion to vote on the variance's practical difficulty requirements, seconded by Mr. Jones and approved 3-0 to vote on the requirements.

The votes are as follows: 1 (permitted use) - 2-1 no, 2 (economic injury) - 2-1 no, 3 (unique circumstances) - 2-1 no, 4 (undesirable change) - 3-0 no, 5 (action of the petitioner) - 1-2 yes, 6 (other feasible alternative) - 2-1 no, 7 (impact on natural environment) - 1-2 yes, 8 (not in Shoreland zone) - 2-1 no. CMP does not meet all of the practical difficulty standards.

The **Vote** to grant the variance is 3-0 to deny the variance. The variance is denied under the rules of practical difficulty.

CMP said that since the same "Unique Circumstances" standard appears in the undue hardship test, CMP does not wish to expand on that portion of the application, assuming that the Board would reach the same conclusion.

The Board voted 3-0 to deny the variance under the 'Undue Hardship' test.

**IV. MINUTES:** Chairman Rengle motioned to approve the November 19, 2009 minutes, seconded by Mr. Emanuelson and approved 3-0.

**V: ADJOURN:** Mr. Emanuelson motioned to adjourn at 9:05pm, seconded by Mr. Jones and approved 3-0.

Respectfully submitted,

Norma A. Hunt

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C. Russ Hansen

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Art Emanuelson

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Leroy Jones

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Ed Rengle